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Wednesday  
August 23, 1989

# federal register

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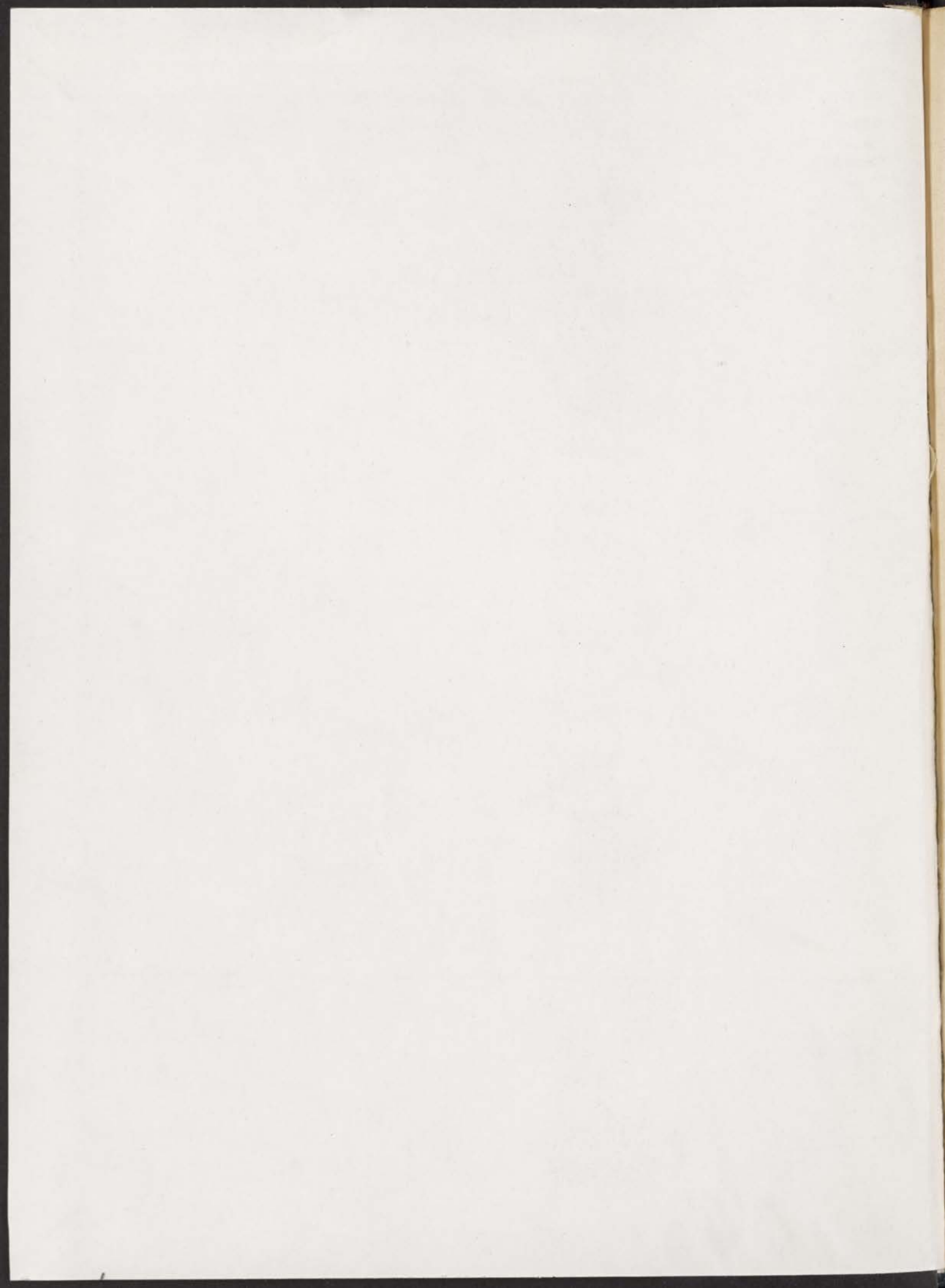
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Wednesday  
August 23, 1989

**Briefings on How To Use the Federal Register**  
For information on briefings in Washington, DC, and  
Atlanta, GA, see announcement on the inside cover of  
this issue.

# Federal Register



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## THE FEDERAL REGISTER

### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### ATLANTA, GA

- WHEN:** September 20; at 9:00 a.m.
- WHERE:** Room 808, 75 Spring Street, SW.  
Richard B. Russell Federal Building  
Atlanta, GA
- RESERVATIONS:** Call the Federal Information Center  
404-331-6895

### WASHINGTON, DC

- WHEN:** September 25; at 9:00 a.m.
- WHERE:** Office of the Federal Register  
First Floor Conference Room  
1100 L Street NW., Washington, DC
- RESERVATIONS:** 202-523-5240



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# Rules and Regulations

Federal Register

Vol. 54, No. 162

Wednesday, August 23, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 151

[Docket No. 89-077]

#### Recognition of Breeds and Books of Record of Purebred Animals

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations relating to recognition of breeds and books of record of purebred animals by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

**EFFECTIVE DATE:** August 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8682.

#### SUPPLEMENTARY INFORMATION:

The regulations in 9 CFR part 151 concern the recognition of breeds and books of record of purebred animals. Before the effective date of this document, these regulations indicated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service was the official responsible for various decisions made according to the regulations. We are revising 9 CFR part 151 to indicate

that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate Federal Register documents.

We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service (APHIS)." We are also adding a definition of "Administrator." Further, we are removing the definitions of "Deputy Administrator" and "Veterinary Services" because those terms are no longer used in the regulations.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

#### Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### Executive Order 12372

These programs/activities under 9 CFR part 151 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.)

#### List of Subjects in 9 CFR Part 151

Animals, Animal pedigree, Imports, Purebred animals.

Accordingly, we are amending 9 CFR part 151 as follows:

## PART 151—RECOGNITION OF BREEDS AND BOOKS OF RECORD OF PUREBRED ANIMALS

1. The authority citation for part 151 continues to read as follows:

Authority: 19 U.S.C. 1202; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 151.1, the definitions of "Deputy Administrator, Veterinary Services" and "Veterinary Services" are removed.

3. In § 151.1, the paragraph designations are removed and all definitions are rearranged in alphabetical order.

4. In § 151.1, definitions of "Administrator" and "Animal and Plant Health Inspection Service" are added in alphabetical order to read as follows:

#### § 151.1 Definitions.

\* \* \* \* \*

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

\* \* \* \* \*

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

\* \* \* \* \*

#### § 151.9 [Amended]

5. In § 151.9, remove the words "Veterinary Services" in the fourth sentence and in their place add "APHIS".

6. In § 151.9, remove "Veterinary Services," in the fifth sentence and in its place add the word "the".

#### §§ 151.1, 151.2, 151.5, 151.9, 151.11 [Amended]

7. In addition to the amendments set forth above, in 9 CFR part 151 remove the words "Deputy Administrator, Veterinary Services" and add, in their place, the word "Administrator" in the following places:

- (a) Section 151.1, definition, "Certificates of pure breeding.";
- (b) Section 151.2;
- (c) Section 151.5;
- (d) Section 151.9;
- (e) Section 151.11(a).

#### §§ 151.1, 151.7 [Amended]

5. In addition to the amendments set forth above, in 9 CFR part 151 remove the words "Veterinary Services" and



add, in their place, the word "APHIS" in the following places:

- (a) Section 151.1, definition, "Inspector";
- (b) Section 151.7(c);
- (c) Section 151.10.

Done in Washington, DC, this 17th day of August 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-19777 Filed 8-22-89; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 89-CE-16-AD; Amdt. 39-6306]

#### Airworthiness Directives; American Champion Aircraft (Bellanca, Champion) Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8GCBC, and 8KCAB Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to American Champion Aircraft (Bellanca, Champion) Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8GCBC, and 8KCAB airplanes equipped with front folding seats. The FAA has received several reports of fatal accidents which have occurred after the seat back failed, causing the jamming of the rear control stick and loss of control of the airplane. The inspections specified in the AD will detect the cracks before a seat back failure occurs and the replacement of the seat frame also specified in the AD will preclude the development of these cracks.

**DATES:** Effective Date: September 21, 1989.

**Compliance:** As prescribed in the body of the AD.

**ADDRESSES:** American Champion Aircraft Service Letter No. 401, dated June 14, 1989, applicable to this AD may be obtained from American Champion Aircraft, P.O. Box 37, Rochester, Wisconsin 53167, Telephone (414) 534-6315. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Gregory J. Michalik, ACE-12OC, Chicago Aircraft Certification Office,

2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-7135.

#### SUPPLEMENTARY INFORMATION:

On January 15, 1987, the FAA was notified by Transport Canada of a fatal accident involving a Bellanca Model 7GCBC airplane. The preliminary investigation by the Canadian Aviation Safety Board (CASB) indicated that the crash was due to a failure of the folding backrest frame of the pilot's seat at the pivot point of the backrest which caused the pilot to shift aft contacting the rear flight control. This caused the airplane to pitch nose-up without recovery.

Two other airplanes of this type were inspected by the CASB and similar signs of metal fractures were evident on one of these seats. On February 18, 1987, Transport Canada issued Service Difficulty Alert (SDA) No. 87-01, relating to these failures. An alert similar to Canadian SDA No. 87-01 was issued by the FAA in the February 1987 issue of Advisory Circular (AC) No. 43-16, "General Aviation Airworthiness Alerts".

On November 14, 1988, the FAA was notified by the National Transportation Safety Board (NTSB) of a fatal accident involving a Bellanca Model 8KCAB airplane. The investigation by the NTSB disclosed that the pilot's folding seatback had failed at the hinge point on the right side and at the welded junction of the seat's lower side tube and seatback side brace on the left side. It is believed that the pilot fell backward and inadvertently exceeded the airplane's design stress limits by pulling or jerking on the front control stick or by hitting or jamming the rear control stick. A review of Service Difficulty Reports (SDR) regarding failures of the folding seatback frames in both Bellanca 7 and 8 series airplanes revealed reports of similar failures. Since February 1989, the FAA has been working with FRA Enterprises and American Champion Aircraft to increase the structural integrity of the folding seat frame and to develop a means for restraining aft seat movement. As a result, American Champion Aircraft has issued Service Letter No. 401, dated June 14, 1989, as a means to correct the front folding seat problem. Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring inspections for cracks in the seat frame and replacement of the seat frame on American Champion Aircraft (Bellanca, Champion) Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8GCBC, and 8KCAB airplanes equipped with front folding seats. Because an emergency condition

exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The FAA has determined that this regulation is an emergency regulation and that it is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

**American Champion Aircraft (Bellanca, Champion):** Applies to Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8GCBC, and 8KCAB (all serial numbers) airplanes certificated in any category, when equipped with front folding seats. Compliance: Required as indicated in the body of the AD, unless already accomplished.



To prevent failure of the seat back which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service after the effective date of this AD and, thereafter at intervals not to exceed 25 hours time-in-service from the last inspection until the actions specified in paragraph (b) below are accomplished, accomplish the following:

(1) Magnetic particle or dye penetrant inspect the left and right sides of the welded lower seat frame side-tube/side-brace junction and seatback hinges for evidence of cracks. If any cracks are found, prior to further flight repair, in accordance with the recommended procedures in Advisory Circular (AC) 43.13-1A, the crack or replace the cracked part with a serviceable part.

(2) Fabricate and install on the instrument panel in clear view of the pilot a placard with letters of minimum 0.2 inches in height which reads as follows: "Warning: Do not pull or push on upper seat back."

(b) Within the next 150 hours time-in-service after the effective date of this AD, replace the front folding seat frame with an exchange unit in accordance with American Champion Aircraft Service Letter No. 401, dated June 14, 1989. The repetitive inspections and the placard specified in paragraph (a) above are no longer required after the actions specified in this paragraph have been accomplished.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All persons affected by this directive may obtain copies of the documents referred to herein upon request to American Champion Aircraft, P.O. Box 37, Rochester, Wisconsin 53167, or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 21, 1989.

Issued in Kansas City, Missouri, on August 11, 1989.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19791 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 89-CE-17-AD; Amdt. 39-6307]

#### Airworthiness Directives; Gulfstream Aerospace Models AA-5, AA-5A, AA-5B, and GA-7 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, request for comments.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to Gulfstream Aerospace Models AA-5, AA-5A, AA-5B, and GA-7 airplanes, which requires a one-time inspection of the fuel tanks and the electric fuel pump filter for contamination, and resealing of the fuel tank access covers with a high-octane fuel resistant sealant. This action is prompted by reports of deteriorated fuel tank access cover sealant which can accumulate at the electric fuel pump filter and cause fuel flow interruption. The inspections and corrective actions required by this AD will eradicate the contamination problem and prevent possible fuel flow interruption.

**DATES:** Effective Date: September 21, 1989. Comments for inclusion in the Rules Docket must be received on or before September 22, 1989.

**Compliance:** Required within the next 25 hours time-in-service unless already accomplished.

**ADDRESSES:** Gulfstream Aerospace Corporation (GAC) Service Bulletins No. 176 and No. ME 22, both dated July 26, 1989, and applicable to this AD, may be obtained from the Gulfstream Aerospace Corporation, Technical Operations Department, Travis Field, P.O. Box 2206, Savannah, Georgia 31402-2206. This information may be examined at the Rules Docket at the address below. Send comments on the AD in triplicate to the FAA, Central Region, Attention: Rules Docket No. 89-CE-17-AD, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben Durrance, Aerospace Engineer, ACE-140A, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Aircraft Certification Service, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349, Telephone (404) 991-3810.

**SUPPLEMENTARY INFORMATION:** Gulfstream Aerospace Models AA-5, AA-5A, AA-5B, GA-7 airplanes were originally manufactured using Product Research and Chemical Corporation PR-1321 sealant to seal the fuel tank access covers. Gulfstream Aerospace Single Engine Aircraft Service Kit No. 140, "Integral Fuel Tank Repairs," and Gulfstream Aerospace GA-7/Cougar Aircraft Service Kit No. 1, "Integral Fuel Tank Repairs," also specified the use of PR-1321 for this purpose. It was subsequently learned that PR-1321 is not suitable for use in a high-octane fuel

environment. In December of 1983, the two service kits were revised to Single Engine Aircraft Service Kit No. 140A and GA-7/Cougar Aircraft Service Kit No. 1A respectively. These revised service kits deleted the reference to PR-1321 and required the use of PR-1403, (a sealant which is compatible with high-octane fuel) on integral fuel tank repairs.

Subsequently, the FAA has received eleven reports of deteriorated access cover sealant found in the fuel tanks of Gulfstream Models AA-5, AA-5A, AA-5B, and GA-7 airplanes. The contamination can appear in any of the following forms: (1) Sealant in a mushy state, usually found in the bottom of the tanks in chunk form; (2) a sticky resinous substance, varying in color and appearing in the drain areas; (3) a fine powder, pink in color, found in the areas of the access covers, and possibly, throughout the fuel system. Sealant which has deteriorated to the powder form poses the greatest hazard to the operation of the airplane because this powder can accumulate at the electric fuel pump filter and result in fuel flow interruption.

Gulfstream Aerospace Corporation (GAC) has written GAC Service Bulletin No. 176 (applicable to Gulfstream Aerospace Models AA-5, AA-5A, and AA-5B airplanes) and GAC Service Bulletin No. ME 22 (applicable to Gulfstream Aerospace Model GA-7 airplanes). These Service Bulletins provide instructions for: (1) Inspection of the fuel tanks and the electric fuel pump filter; (2) cleaning of the fuel tanks and/or fuel system (if contamination is present); (3) resealing of the access covers with high-octane fuel resistant sealant. Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, and AD is being issued requiring that the actions specified in GAC Service Bulletin No. 176 or ME 22, as applicable, be accomplished on all Gulfstream Aerospace Models AA-5, AA-5A, AA-5B, and GA-7 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule.



Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report summarizing each FAA public contract concerned with the substance of this AD, will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

#### List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR part 39 of the FAR as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

**Gulfstream Aerospace Corporation:** Applies to Gulfstream Aerospace Models AA-5, AA-5A, AA-5B, and GA-7 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 25 hours time-in-service after the effective date of this AD, unless already accomplished. To preclude fuel tank/fuel system contamination caused by deterioration of fuel tank access cover sealant, accomplish the following:

(a) Inspect the fuel tanks, fuel system, and the electric fuel pump filter for fuel tank sealant contamination in accordance with the instructions specified in Gulfstream Aerospace Corporation (GAC) Service Bulletin (S/B) No. 176, dated July 26, 1989, or GAC S/B No. ME 22, dated July 26, 1989, as applicable. If contamination is detected, prior to further flight clean the fuel system and all fuel system components in accordance with the instructions in the above listed applicable GAC S/B.

(b) Reseal the fuel tank access covers using high-octane fuel resistant sealant per the instructions in the applicable GAC S/B listed in paragraph (a) of this AD.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Aircraft Certification Service, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Gulfstream Aerospace Corporation, Technical Operations Department, Travis Field, P.O. Box 2206, Savannah, Georgia 31402-2206; or may examine the documents at the FAA, Office of the Assistant Chief Counsel, Room 1558 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 21, 1989.

Issued in Kansas City, Missouri, on August 11, 1989.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19792 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 88-NM-210-AD; Amdt. 39-6311]

**Airworthiness Directives; Lockheed Aeronautical Systems Company Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to Lockheed Model L-1011-385 series airplanes, which currently requires deactivation of the AC electric motor-driven hydraulic pumps. That action was prompted by a report of smoke and fire damage resulting from a failed AC electric motor-driven hydraulic pump electrical connector, in combination with leaking hydraulic fluid from the failed electro-hydraulic component. This amendment permits the installation of a newly-designed AC Hydraulic Pump Magnetic Circuit Breaker Panel (MCBP), which removes the restrictions on the use of the two hydraulic pumps imposed by the existing AD.

**EFFECTIVE DATE:** October 2, 1989.

**ADDRESSES:** The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65-33, Unit 20, Plant A-1. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5344.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Lockheed Model L-1011-385 series airplanes, to permit the installation of a newly-designed AC Hydraulic Pump Magnetic Circuit Breaker Panel (MCBP), which would remove restrictions on the use of the pumps, was published in the



Federal Register April 10, 1989, (54 FR 14241).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comments were received from the Air Transport Association (ATA) of America and one operator, both of whom supported adoption of the proposal. However, one of the commenters requested that an alternate means of compliance be approved, in lieu of the circuit validation test procedures now provided by Lockheed Service Bulletin 093-29-088, Revision 1, dated March 7, 1989. The commenter stated that repeated validation testing could be more safely and easily accomplished by removing the pump electrical connector and connecting it to a test box. The test box operation would direct current from one of the three phases, through a known load and then into the neutral circuit, which would cause the magnetic circuit breaker to trip in the same manner as lifting a phase lead from the Remote Controlled Circuit Breaker (RCCB). The FAA agrees that the utilization of a test box for the repeated validation tests would be more efficient than lifting a phase lead from the RCCB, but a test box for accomplishing this task is not available at this time. Therefore, the FAA does not concur with the commenter's suggestion. Should such a test box become available, operators may apply to use it as an alternate means of compliance, as provided by paragraph D. of the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 241 Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 series airplanes of the affected design in the worldwide fleet. It is estimated that 116 airplanes of U.S. registry will be affected by this AD, that it will take approximately 29 manhours per airplane to accomplish the option terminating action, and that the average labor cost will be \$40 per manhour. Kits to accomplish the modification will be provided by Lockheed at no cost to operators. Based on these figures, the total cost impact of the AD on those U.S. operators who accomplish the optional terminating action is estimated to be \$1,160 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on "a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by amending Amendment 39-5923 (53 FR 17017; May 13, 1988), AD 88-07-51, as follows:

#### Lockheed Aeronautical Systems Company:

Applies to Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 series airplanes, as listed in Lockheed TriStar L-1011 Service Bulletin 093-29-A088, dated April 14, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a fire from a failed AC electrical motor-driven hydraulic pump electrical connector, in combination with leaking hydraulic fluid from the failed electro-hydraulic component, accomplish the following:

A. Within 100 flight hours after June 3, 1988 (which is the effective date of Amendment 39-5923), accomplish the following:

1. On the Flight Engineer/Second Officer's (FE/SO) overhead CB panel CB2, open and collar circuit breakers L12 "AC Pump B3" and L22 "AC Pump C3", using PACO plastic ring P/N S-4933959-503 or equivalent.

2. As a verification that power has been removed from affected pumps, on the FE/SO hydraulic system control panel, cycle the AC pumps switch lights and verify that the "ON" legends do not illuminate.

B. Accomplishment of the requirements of paragraph A., above, in accordance with Lockheed TriStar L-1011 Alert Service Bulletin 093-29-A088, dated April 14, 1988, is considered an acceptable means of compliance with this AD.

C. Installation of a AC Hydraulic Pump Magnetic Circuit Breaker Panel (MCBP) in the Mid-Electrical Service Center (MESC) and associated aircraft wiring, in accordance with Lockheed TriStar L-1011 Service Bulletin 093-29-088, Revision 1, dated March 7, 1989, constitutes terminating action for the requirements of paragraph A., above. The hydraulic pumps may then be reactivated by removing the circuit breaker collars installed in accordance with paragraph A.1., above, and closing the circuit breakers.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: This request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65-33, Unit 20, Plant A-1. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment amends Amendment 39-5923, AD 88-07-51.

This amendment becomes effective October 2, 1989.

Issued in Seattle, Washington, on August 15, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19793 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Parts 101 and 103

#### RIN 1076-AC00 and 1076-AC01

### Loans to Indians From the Revolving Loan Fund and Loan Guaranty, Insurance, and Interest Subsidy

July 21, 1989.

AGENCY: Bureau of Indian Affairs, Interior.



**ACTION:** Final rule.

**SUMMARY:** The Indian Financing Act Amendments of 1984 amended the Indian Financing Act of 1974 by removing a restriction precluding individual Indians who are members of tribes having credit programs from receiving direct loans or loan guarantees from the Bureau of Indian Affairs; allowing the Secretary to cancel loan payment obligations without Congressional approval; authorizing annual appropriations to cover losses on guaranteed or insured loans, and making interest payments on such loans. These legislative amendments are the basis for amending subchapter G, parts 101 and 103, of the Code of Federal Regulations.

**EFFECTIVE DATE:** September 22, 1989.

**FOR FURTHER INFORMATION CONTACT:** Richard Nephew, Division of Financial Assistance, Bureau of Indian Affairs, telephone (202) 343-5324.

**SUPPLEMENTARY INFORMATION:** These amendments are published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons were given the opportunity to submit written comments regarding the proposed rule as they were published April 11, 1989, at 54 FR 14361.

One letter was received commenting that the 1988 amendments to the Indian Financing Act should be incorporated in the amendments to the Code of Federal Regulations. These 1988 amendments include authority to guarantee bonds, an increase in the maximum loan guaranty for individuals, and bonuses to Federal contractors who subcontract with Indian business enterprises. The proposed rulemaking for these regulations although published after the 1988 amendments became effective was prepared before their enactment and consequently reflects only the 1984 amendments to the Indian Financing Act. Consequently, except for amending § 103.13 in the final rule to reflect that the statutory limit for loan guarantees for individual Indians has been raised to \$500,000 by the 1988 amendments, other changes in the regulations authorized by the 1988 amendments must await future proposed rulemaking.

This final rule reflects changes in the Indian Financing Act of 1974 which expand financing opportunities to individual Indians for participation in the development of Indian economies.

Prior to the passage of the Indian Financing Act Amendments of 1984, individual Indians who were members of tribes having relending programs were ineligible to receive guaranteed or direct loans from the Bureau. Guaranteed loans to other eligible individuals were limited by the Act to \$100,000, and direct loans were administratively held to the same level. Since the limit for a guaranteed loan to an individual has been raised to \$500,000 and eligibility expanded, use of the program is expected to increase. Direct loans to individuals are not limited by the Act or its Amendments and those are being set at a \$350,000 limit in the rule. The minimum limit of \$10,000 on guaranteed loans, along with the minimum time limit of one year, were removed because they are unnecessary.

The 1984 legislative amendments removed the Leavitt Act (47 Stat. 564, 25 U.S.C. 386a) restriction on reporting cancellations to Congress before they became effective. This allows cancellations to be considered at any time and eliminates the waiting period after the Secretary has signed the cancellation order.

Another change adds the 1984 amendment requirement that all guaranteed loans shall be reviewed by the Bureau, independent of the lending institution.

The rule also provides that loans with variable interest rates may be guaranteed.

The Department of the Interior has determined that this document is not a major action under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It is estimated the program regulated by this part will have no more than a \$50 million gross annual effect on the national economy. It is then, by definition at 318 DM 5, not a major action. Since this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, no environmental assessments were made.

The collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* The clearance number assigned is 1076-0020.

Public reporting burden for this collection of information is estimated to vary from 15 minutes to 3 hours per response, with an average of one hour per response, including the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337-SIB, 18th and C Streets NW., Washington, DC 20240; and the Paperwork Reduction Project (1076-0020), Office of Management and Budget, Washington, DC 20503.

The primary authors of this document are Richard K. Nephew and Woodrow Sneed, Division of Financial Assistance, Bureau of Indian Affairs, telephone number (202) 343-5324.

**List of Subjects****25 CFR Part 101**

Indians—business and finance, Loan programs—Indians, Reporting and recordkeeping requirements.

**25 CFR Part 103**

Indians—business and finance, Loan programs—business, Loan programs—Indians.

For the reasons set out in the preamble, parts 101 and 103 of title 25, chapter I of the Federal Regulations are amended as set forth below.

**PART 101—[AMENDED]**

1. The authority citation for part 101 is revised to read as follows:

Authority: 25 U.S.C. 1469.

2. Section 101.2 is amended by revising the introductory text of paragraph (b) to read as follows:

**§ 101.2 Kinds of loans.**

(b) Direct loans may be made by the United States to eligible tribes, tribal organizations or corporations and tribal cooperative associations without fund restrictions. Direct loans to individual Indians, partnerships, and other non-tribal organizations shall not exceed \$350,000. Direct loans from the United States shall be made for the following purposes:

3. Section 101.3 is amended by revising paragraph (a) to read as follows:

**§ 101.3 Eligible borrowers under United States direct loan program.**

(a) Loans may be made from the revolving loan fund to Indians, eligible tribes and relending organizations, and corporations, cooperative associations



and partnerships having a form of organization satisfactory to the Commissioner. Loans may be made to applicants only when, in the judgment of the Commissioner, there is a reasonable prospect of repayment. Loans may be made only to an applicant who, in the opinion of the Commissioner, is unable to obtain financing on reasonable terms and conditions from other sources such as tribal relending programs, banks, Farmers Home Administration, Small Business Administration, Production Credit Associations, or Federal Land Banks, and is also unable to obtain a guaranteed or insured loan pursuant to title II of the Indian Financing Act of 1974 (88 Stat. 77).

4. Section 101.7 is amended by revising the first sentence to read as follows:

**§ 101.7 Management and technical assistance.**

Prior to and concurrent with the approval of a United States direct loan to finance an economic enterprise, the Commissioner will assure under title V of the Indian Financing Act of 1974 that competent management and technical assistance is available to the loan applicant for preparation of the application and/or administration of funds loaned consistent with the nature of the enterprise proposed to be or in fact funded by the loan. \* \* \*

5. Section 101.17 is revised to read as follows:

**§ 101.17 Uncollectable loans made by the United States.**

If the Secretary determines that a United States direct loan is uncollectable in whole or in part or is collectable only at an unreasonable cost, or when such action would be in the best interest of the United States, the Secretary may cancel, adjust, compromise, or reduce the amount of any loan made from the revolving loan fund. The Commissioner may adjust, compromise, subordinate, or modify the terms of any mortgage, lease, assignment, contract, agreement, or other document taken as security for loans. The cancellation of all or part of a loan shall become effective when signed by the Secretary.

6. A new § 101.26 is added to read as follows:

**§ 101.26 Information collection.**

(a) The collections of information contained in §§ 101.3, 101.4, 101.12, and 101.25 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0020. The

information will be used to rate applicants in accordance with the terms and conditions set forth in section 103 of the Indian Financing Act, as amended. Response is required to obtain a benefit in accordance with 25 U.S.C. 1451.

(b) Public reporting burden for this information is estimated to vary from 15 minutes to 3 hours per response, with an average of one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337-SIB, 18th and C Streets NW., Washington, DC 20240; and the Paperwork Reduction Project (1076-0020), Office of Management and Budget, Washington, DC 20503.

**PART 103—[AMENDED]**

7. The authority citation for part 103 is revised to read as follows:

Authority: 25 U.S.C. 1498.

8. Section 103.4 is amended by revising the first sentence in paragraph (a) to read as follows:

**§ 103.4 Management and technical assistance.**

(a) Prior to and concurrent with the issuance of a guaranty certificate for a loan to finance an economic enterprise, the Commissioner will assure under title V of the Indian Financing Act that competent management and technical assistance are available for preparation of the application and/or administration of funds granted consistent with the nature of the enterprise proposed to be or that is in fact funded. \* \* \*

9. Section 103.8 is revised to read as follows:

**§ 103.8 Eligible individuals.**

Indians who are members of tribes recognized by the federal government as eligible for services from the Bureau of Indian Affairs are eligible for guaranteed or insured loans. Individuals applying for a guaranteed or insured loan to purchase, establish or operate an economic enterprise on a reservation must comply with the requirements of applicable rules, resolutions or ordinances enacted by the governing body of the tribe.

10. Section 103.13 is amended by revising paragraph (a) to read as follows:

**§ 103.13 Amount of guaranty.**

(a) The percentage of a loan that is guaranteed shall be the minimum necessary to obtain financing for an applicant, but may not exceed 90 percent of the unpaid principal and interest. The liability under the guaranty shall increase or decrease pro rata with any increase or decrease in the unpaid portion of the principal amount of the obligation. No loan to an individual Indian may be guaranteed for an unpaid principal amount in excess of \$500,000.

11. A new § 103.55 is added to read as follows:

**§ 103.55 Information collection.**

(a) The collection of information contained in § 103.15 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0020. The information will be used to rate applicant in accordance with the terms and conditions set forth in §§ 103.4, 103.9, 103.15, 103.36, 103.37, 103.42, 103.43, and 103.52 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* information will be issued to rate applicants in accordance with the terms and conditions set forth in section 103 of the Indian Financing Act, as amended. Response is required to obtain a benefit in accordance with 25 U.S.C. 1451.

(b) Public reporting burden for this information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337-SIB, 18th and C Streets NW., Washington, DC 20240; and the Paperwork Reduction Project (1076-0020), Office of Management and Budget, Washington, DC 20503.

12. Section 103.15, Application for loans, is amended by removing the last sentence in paragraph (b)(2) and by adding a new paragraph (c) to read as follows:

**§ 103.15 [Amended]**

(c) The Commissioner will review applications for guaranteed loans individually and independently for the lending institution.



13. Section 103.39 is revised to read as follows:

**§ 103.39 Cancellation.**

The Secretary may cancel the uncollectable portion of any obligation assigned to the United States or rights to which the United States is subrogated and the security assigned to the United States.

14. Section 103.41 is amended by revising the next to the last sentence to read as follows:

**§ 103.41 Interest.**

\* \* \* Once a loan is closed the interest rate may not be increased except when a variable interest rate tied to a specified base rate agreed upon by the borrower and the lender has been approved by the Commissioner. \* \* \*

Walter R. Mills,

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc. 89-19814 Filed 8-22-89; 8:45 am]

BILLING CODE 4310-02-M

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

#### Bank Secrecy Act; Geographic Targeting of Certain Domestic Currency Transactions; Correction

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Final rule, correction.

**SUMMARY:** A final rule was published on August 16, 1989, at 54 FR 33675, amending the Bank Secrecy Act regulations in 31 CFR part 103 relating to the geographic targeting of certain domestic currency transactions. This document corrects two minor errors in the amendatory language.

**FOR FURTHER INFORMATION CONTACT:** Kathleen A. Scott, Office of the Assistant General Counsel (Enforcement), (202) 566-9947.

**SUPPLEMENTARY INFORMATION:** A final rule was published on August 16, 1989, at 54 FR 33675, amending the Bank Secrecy Act regulations in 31 CFR part 103 relating to the geographic targeting of certain domestic currency transactions. In that document, three amendments were made, one adding a

new § 103.26 describing the procedures used in issuing such orders, and two others amending the present recordkeeping requirements in 31 CFR 103.33 and 103.38. In the amendatory language concerning the latter two amendments, the phrase "It is proposed to amend" is used instead of the proper amendatory language indicating that the sections were in fact being amended by the document.

#### Correction

On page 33679 of the August 16, 1989, *Federal Register*, amendment to the regulation section, the amendatory language of paragraph #3 should read "§ 103.33 is amended to add at the end a new paragraph (d) to read as follows:". On the same page, the amendatory language of paragraph #4 should read as follows: "Section 103.38 is amended by adding in paragraph (d), after the first sentence, a new sentence to read as follows:".

Dated: August 17, 1989.

Salvatore R. Martoche,

*Assistant Secretary (Enforcement).*

[FR Doc. 89-19785 Filed 8-22-89; 8:45 am]

BILLING CODE 4810-25-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### 32 CFR Part 706

#### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS COMSTOCK (LSD-45) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval dock landing ship. The intended effect of this rule is to

warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** August 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

#### SUPPLEMENTARY INFORMATION:

Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS COMSTOCK (LSD-45) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Judge Advocate General the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

#### List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and vessels.

#### PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by adding the following vessel:



| Vessel       | Number | Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i) | Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii) | Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f) | Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i) | Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b) | Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a) | After masthead light less than 1/2 ship's length aft of forward masthead. Annex I, sec. (3)(a) | Percentage horizontal separation attained |
|--------------|--------|--|--|--|---|---|---|--|---|
| USS COMSTOCK | LSD-46 |  |  |  |   |   | X   |  | 64  |

Dated: August 9, 1989.

Approved:

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy Acting Judge Advocate General.

[FR Doc. 89-19833 Filed 8-22-89; 8:45 am]

BILLING CODE 3810-AE-M

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### 36 CFR Part 1190

#### Minimum Guidelines and Requirements for Accessible Design; Correction

**AGENCY:** United States Architectural and Transportation Barriers Compliance Board (ATBCB).

**ACTION:** Final rule; correction.

**SUMMARY:** On February 3, 1989, at 54 FR 5434, the Architectural and Transportation Barriers Compliance Board amended its Minimum Guidelines and Requirements for Accessible Design (MGRAD). This document corrects technical errors appearing in that document.

**FOR FURTHER INFORMATION CONTACT:** Ruth Lusher, Acting Director of Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1111 18th Street NW., Suite 501, Washington, DC 20036; (202) 653-7834 (voice or TDD).

**SUPPLEMENTARY INFORMATION:** In rule document 89-2435 beginning on page 5434, in the issue of Friday, February 3, 1989, make the following corrections:

### PART 1190—[CORRECTED]

#### § 1190.31 [Corrected]

1. On page 5445, in the first column, in amendatory instruction "h.", in the second line, the reference to "Section 1190.100, Platform lifts" should read "Section 1190.110, Platform lifts".

2. On page 5446, in the first column, amendatory instruction "u." was incomplete and should read as follows:

u. Section 1190.31(t) is amended by removing "Section 1190.240, Storage" and "Section 1190.240" wherever each appears and inserting in lieu thereof "ANSI A117.1-1986, section 4.23, Storage. (Incorporated by reference, see 1190.31(a).)"

Dated: August 16, 1989.

James J. Raggio,

Acting Executive Director, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 89-19866 Filed 8-22-89; 8:45 am]

BILLING CODE 6820-SP-M

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Chapter I

#### Nomenclature Changes; Technical Amendments

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final technical amendments.

**SUMMARY:** The Department of Veterans Affairs Act established the Veterans Administration as the Department of Veterans Affairs, an executive-level Department, (see 54 FR 10476). The Department of Veterans Affairs (VA) is making technical amendments to title 38, Code of Federal Regulations, chapter I, to bring its nomenclature into conformance with the changes required by the Act.

**EFFECTIVE DATE:** These final amendments are retroactively effective to March 15, 1989, the effective date of VA becoming the Department of Veterans Affairs.

**FOR FURTHER INFORMATION CONTACT:** Lynn H. Covington, Director, Paperwork Management and Regulations Service (73), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3616.

**SUPPLEMENTARY INFORMATION:** VA is updating 38 CFR chapter I nomenclature to conform to the Department of Veterans Affairs, Act, Pub. L. 100-527. However, the Department's

reorganization under Public Law 100-527 is not yet totally finalized. Any further changes requiring amendment of 38 CFR chapter I will be published at a later date. Those changes will primarily reflect new titles for personnel responsible for certain functions which appear in 38 CFR. At this time, VA is also taking the opportunity to remove any gender-specific language remaining in 38 CFR as required by 38 CFR 1.13, and is making certain that terms used by the Department are consistent throughout 38 CFR to avoid any confusion. For example, the terms field facility and field station have been used interchangeably in 38 CFR; the term field facility is now used throughout the title.

VA finds that good cause exists for making these amendments final without previous publication of a notice of proposed rulemaking, and for making them retroactively effective to the date of the establishment of the Department of Veterans Affairs, March 15, 1989. All the changes contained in these regulations are technical ones designed to correct erroneous references and eliminate sexually biased language. There are no substantive changes. Public participation in this rulemaking is therefore unnecessary (38 CFR 1.12).

Since a notice of proposed rulemaking is unnecessary and will not be published, these final amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the Act. These amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These final regulatory amendments do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The final regulatory amendments will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs and prices for anyone. They will have no significant adverse effects on



competition employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or foreign-based markets.

These final regulatory amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

These amendments are promulgated under the authority granted the Secretary of Veterans Affairs by 38 U.S.C. 210(c).

Approved: August 15, 1989.

Edward J. Derwinski,  
Secretary of Veterans Affairs.

38. CFR chapter I, Pensions, Bonuses, and Veterans' Relief, is amended as follows:

#### 38 CFR CHAPTER I—[AMENDED]

1. In 38 CFR chapter I remove the words "Veterans Administration" and "Veterans' Administration" and add, in their place, the words "Department of Veterans Affairs" everywhere they appear.

2. In 38 CFR chapter I remove the words "Department of Medicine and Surgery" and add, in their place, the words "Veterans Health Services and Research Administration" everywhere they appear.

3. In 38 CFR chapter I remove the words "Department of Veterans Benefits" and add, in their place, the words "Veterans Benefits Administration" everywhere they appear.

4. In 38 CFR chapter I remove the words "Department of Memorial Affairs" and add, in their place, the words "National Cemetery System" everywhere they appear.

5. In 38 CFR chapter I remove the acronyms "DM&S", "DVB", and "DMA" and add, in their place, the acronyms "VHS&RA", "VBA", and "NCS" respectively everywhere they appear.

6. In 38 CFR Chapter I remove the words "Administrator" and "Administrator's" and add, in their place, the words "Secretary" and "Secretary's" respectively everywhere they appear.

7. In 38 CFR Chapter I remove the words "Administrator of Veterans Affairs" and add, in their place, the words "Secretary of Veterans Affairs" everywhere they appear.

8. In 38 CFR Chapter I remove the words "Deputy Administrator" and "Deputy Administrator's" and add, in their place, the words "Deputy Secretary" and "Deputy Secretary's" respectively everywhere they appear.

9. In 38 CFR Chapter I remove the words "Chief Memorial Affairs Director" and add, in their place, the words "Director, National Cemetery System" everywhere they appear.

In addition to the amendments set forth above, 38 CFR Chapter I is further amended as follows:

#### PART 0—[AMENDED]

1. §§ 0.735-10, 0.735-11, 0.735-21, 0.735-51, 0.735-52, 0.735-53, 0.735-54, and 0.735-56 remove the word "himself" and add in its place, the words "himself or herself" in the following places:

(a) Section 0.735-10(a);  
(b) Section 0.735-11(a) introductory text and (c);

(c) Section 0.735-21(f);  
(d) Section 0.735-51;  
(e) Section 0.735-52(a);  
(f) Section 0.735-53;  
(g) Section 0.735-54; and  
(h) Section 0.735-56.

2. In §§ 0.735-10, 0.735-11, 0.735-12, 0.735-13, 0.735-19, 0.735-20, 0.735-21, 0.735-23, 0.735-51, 0.735-52, 0.735-53, 0.735-54, 0.735-55, 0.735-56, 0.735-57, 0.735-71, 0.735-82, 0.735-83, 0.735-84, and 0.735-85, remove the word "his" and add, in its place, the words "his or her" in the following places:

(a) Section 0.735-19(d);  
(b) Section 0.735-11(a) introductory text, (a)(3), (b)(1), and (f);  
(c) Section 0.735-12(a) introductory text, (a)(2) and (a)(6);  
(d) Section 0.735-13(c);  
(e) Section 0.735-19(a);  
(f) Section 0.735-20(e)(1), (e)(3), and (g);

(g) Section 0.735-21(c) and (d)(2);  
(h) Section 0.735-23(b) (14)(iii);  
(i) Section 0.735-51;  
(j) Section 0.735-52(a);  
(k) Section 0.735-53;  
(l) Section 0.735-54;  
(m) Section 0.735-55(a), (b), (c)(3), (d); and (e)(2);

(n) Section 0.735-56;  
(o) Section 0.735-57;  
(p) Section 0.735-71;  
(q) Section 0.735-82(b);  
(r) Section 0.735-83;  
(s) Section 0.735-84; and  
(t) Section 0.735-85(d) and (e).

3. In §§ 0.735-10, 0.735-16, 0.735-20, 0.735-21, 0.735-51, 0.735-52, 0.735-53, 0.735-54, 0.735-55, 0.735-83, and 0.735-85 remove the word "he" and add, in its place, the words "he or she" in the following places:

(a) Section 0.735-10(d);  
(b) Section 0.735-16(c);  
(c) Section 0.735-20(g);  
(d) Section 0.735-21(e)(2) and (f);  
(e) Section 0.735-51;  
(f) Section 0.735-52(a);

(g) Section 0.735-53;  
(h) Section 0.735-54;  
(i) Section 0.735-55(a), (b), (c)(3), (e) introductory text and (e)(1);  
(j) Section 0.735-83; and  
(k) Section 0.735-85(d) introductory text.

#### §§ 0.735-84 and 0.735-85 [Amended]

4. In §§ 0.735-84 and 0.735-85(d) introductory text remove the word "him" and add, in its place, the words "him or her".

5. In §§ 0.735-4(c), 0.735-19(a), 0.735-73(e), and 0.735-75 introductory text remove the word "station" or "stations" and add, in its place, the word "facility" or "facilities."

#### §§ 0.735-21 and 0.735-75 [Amended]

6. In §§ 0.735-21(m)(2) and 0.735-75 introductory text remove the word "Station" and add, in its place, the word "Facility".

#### §§ 0.735-73 and 0.735-80 [Amended]

7. In §§ 0.735-73(f)(1) and 0.735-80 remove the word "stations" and add, in its place, the word "facilities".

8. In §§ 0.735-19(a), 0.735-21(o), and 0.735-75 introductory text remove the word "department" and add, in its place, the word "administration".

9. In §§ 0.735-12(c), 0.735-21(i), and 0.735-85(d) remove the word "agency's" and add, in its place, the word "Department".

#### § 0.735-85 [Amended]

10. In § 0.735-85(d) remove the word "agency" and add, in its place, the word "Department's".

#### §§ 0.735-75 [Amended]

11. In §§ 0.735-75 introductory text and 0.735-80 remove the word "departments" and add, in its place, the word "administrations".

#### § 0.735-82 [Amended]

12. In § 0.735-82 remove the word "he" and add, in its place, the words "the Secretary".

#### PART 1—[AMENDED]

##### § 1.704 [Removed and Reserved]

1. Remove and reserve § 1.704.

##### § 1.503 [Amended]

2. In § 1.503 table of contents and section heading remove the word "his" and add, in its place, the words "his or her".

##### §§ 1.982 and 1.983 [Amended]

3. In §§ 1.982 and 1.983 table of contents and section heading remove the "the VA" and add, in their place, the word "VA".



4. In §§ 1.303, 1.575, 1.902, 1.912, 1.912a, 1.916, 1.917, 1.918, 1.922, 1.923, 1.924, 1.925, 1.926, 1.927, 1.930, 1.932, 1.935, 1.937, 1.938, 1.940, 1.942, 1.951, 1.953, 1.982, 1.985, 1.990, and 1.994, remove the words "The VA" and add, in their place, the word "VA" in the following places:

- (a) Section 1.303(a)(1);
- (b) Section 1.575(b);
- (c) Section 1.902 (c) and (d);
- (d) Section 1.912 (a) NOTE., and (b);
- (e) Section 1.912a(a);
- (f) Section 1.916;
- (g) Section 1.917(c);
- (h) Section 1.918;
- (i) Section 1.922(d)(2)(i);
- (j) Section 1.923 (a), (b)(1), (b)(2), and (b)(3);
- (k) Section 1.924 (b) and (c);
- (l) Section 1.925 (b)(2) and (b)(3);
- (m) Section 1.926(b);
- (n) Section 1.927(b);
- (o) Section 1.930(a);
- (p) Section 1.932;
- (q) Section 1.935;
- (r) Section 1.937;
- (s) Section 1.938;
- (t) Section 1.940(a);
- (u) Section 1.942(f);
- (v) Section 1.951 (a)(3)(ii)(C) and (b);
- (w) Section 1.953 introductory text;
- (x) Section 1.982(a);
- (y) Section 1.985(b);
- (z) Section 1.990(b); and;
- (aa) Section 1.994 introductory text and (b).

5. In §§ 1.218, 1.302, 1.555, 1.575, 1.902, 1.907, 1.912, 1.917, 1.919, 1.922, 1.923, 1.924, 1.925, 1.926, 1.928, 1.930, 1.931, 1.940, 1.941, 1.942, 1.943, 1.950, 1.962, 1.980, 1.982, 1.983, 1.984, 1.989, 1.990, and 1.991, remove the words "the VA" and add, in their place, the word "VA" in the following places:

- (a) Section 1.218 (a), (a)(2), and (b);
- (b) Section 1.302(a);
- (c) Section 1.555 (a)(2), (a)(8), (b)(4), (c), and (g)(1);
- (d) Section 1.575(c);
- (e) Section 1.902(b);
- (f) Section 1.907 (a) and (b);
- (g) Section 1.912 (a), (b), (b)(6), (c)(1), (c)(2), (c)(3), (e)(1), (e)(3) and (f);
- (h) Section 1.917 (a), (b), (c), and (d);
- (i) Section 1.919 (a) introductory text, (c), and (f)(1);
- (j) Section 1.922 (a)(1) and (c);
- (k) Section 1.923 (a)(1), (a)(4), (b)(4) and (b)(5) introductory text;
- (l) Section 1.924 (a) and (b);
- (m) Section 1.925 (a), (b) introductory text, (b)(1), (c), and (d);
- (n) Section 1.926 (a), introductory text of (c), (c)(5), (d), and (e);
- (o) Section 1.928(b);
- (p) Section 1.930 (a) and (b);
- (q) Section 1.931 (a), (a)(2), and (e);

- (r) Section 1.940 (a) and (b);
- (s) Section 1.941(b);
- (t) Section 1.942(a);
- (u) Section 1.943;
- (v) Section 1.950 (b), (d) and (e);
- (w) Section 1.962 introductory text, and paragraph (b);
- (x) Section 1.980 (b) and (d);
- (y) Section 1.982 heading and (a);
- (z) Section 1.983 heading and (a), (b), and (b)(8);
- (aa) Section 1.984(b);
- (bb) Section 1.989(b);
- (cc) Section 1.990(b); and
- (dd) Section 1.991(a).

6. In §§ 1.925(e), 1.926(c)(2), 1.935, 1.950(a), 1.982(c)(2), 1.983(b)(5), and 1.987 (a) and (b) remove the words "the VA's" and add, in their place, the word "VA's".

7. In §§ 1.11, 1.500(d), 1.503, 1.507, 1.524(a), 1.525(a)(1), and 1.656(a) remove the word "him" and add, in its place, the words "him or her".

#### §§ 1.500 and 1.503 [Amended]

8. In §§ 1.500(b) and 1.503 remove the word "himself" and add, in its place, the words "himself or herself".

9. In §§ 1.500(b), 1.503 heading and text, 1.507, 1.510, 1.511(a)(1), 1.513(a)(xi), 1.513a(a), 1.514 (a) and (b), 1.514(a), 1.518(b)(2), 1.521, 1.525(a) (1) and (4), 1.527(a), 1.655, and 1.656 introductory text and paragraphs (a) and (b) remove the words "his" and add, in its place, the words "his or her".

#### § 1.524 [Amended]

9a. In § 1.524(c) remove "his wife" and add, in its place "his or her spouse".

10. In §§ 1.500(d), 1.511(c), 1.525 (a)(4) and (e), 1.655 and 1.657 remove the words "he" and add, in its place, the words "he or she".

11. In §§ 1.10, 1.450(c), 1.500, 1.509, 1.511, 1.517, 1.527, 1.550, 1.555, 1.556, 1.657, 1.659, and 1.660 remove the word "station" and add, in its place, the word "facility" in the following places:

- (a) Section 1.10;
  - (b) Section 1.450(c);
  - (c) Section 1.500(c);
  - (d) Section 1.509;
  - (e) Section 1.511(a)(1);
  - (f) Section 1.517;
  - (g) Section 1.527 (a), (b), and (e) and (i);
  - (h) Section 1.550(b);
  - (i) Section 1.555 (b)(3), (d)(4), (g)(1) through (g)(3);
  - (j) Section 1.556;
  - (k) Section 1.657;
  - (l) Section 1.659; and
  - (m) Section 1.660.
12. In §§ 1.500(c), 1.525(a)(1), 1.552(a), 1.553(b), 1.577(b), and 1.894 remove the word "stations" and add, in their place, the word "facilities".

#### § 1.518 [Amended]

13. In § 1.518(c) remove the word "station's" and add, in its place, the word "facility's".

#### § 1.525 [Amended]

14. In § 1.525(c) remove the word "Station" and add, in its place, the word "Facility".

15. In §§ 1.218, 1.500, 1.507, 1.527, 1.550, 1.555, 1.556, 1.579, 1.657, 1.660, and 1.672(a) remove the word "department" and add, in its place, the word "administration" in the following places:

- (a) Section 1.218(c)(1);
- (b) Section 1.500;
- (c) Section 1.507;
- (d) Section 1.527 (a) and (b);
- (e) Section 1.550(b);
- (f) Section 1.555(b)(3);
- (g) Section 1.556;
- (h) Section 1.579(b) introductory text;
- (i) Section 1.657;
- (j) Section 1.660; and
- (k) Section 1.672(a).

16. In §§ 1.218(c) (1) and (2), 1.526(1), 1.551(b), and 1.672(c) remove the word "Department" and add, in its place, the word "Administration".

17. In §§ 1.15(f)(2), 1.554(c)(2), 1.555(b)(2) and (g)(4) (ii) and (iii), and 1.897 remove the word "Agency" and add, in its place, the word "Department".

#### §§ 1.555 and 1.911 [Amended]

18. In § 1.555(c) and § 1.911(a) remove the word "Agency's" and add, in its place, the word "Department's".

#### § 1.579 [Amended]

19. In § 1.579(b)(1) remove the word "Departments" and add, in its place, the word "Administrations".

#### § 1.894 [Amended]

20. In § 1.894 remove the word "agencywide" and add, in its place, the word "departmentwide".

#### § 1.897 [Amended]

21. In § 1.897 remove the word "agency" and add, in its place, the word "Department".

#### § 1.922 [Amended]

22. In § 1.922(a)(2) remove the words "agency's" and "agency" and add, in their place, the words "Department's" and "Department" respectively.

23. In §§ 1.11, 1.452(a) and (a)(7), and 1.651(c) remove the word "his" before the word "designee".

#### § 1.12 [Amended]

24. In § 1.12 remove the words "his Deputies" and add, in their place the words "the Secretary's Deputies".



**§ 1.15 [Amended]**

25. In § 1.15(f)(3) remove the word "Alternative" and add, in its place, the word "Alternatives".

**§ 1.17 [Amended]**

26. In § 1.17(e) removed the words "sufficient" and "tha" and add, in their place the words "sufficient" and "the" respectively.

**§ 1.452 [Amended]**

27. In § 1.452(b) remove the word "him" and add, in its place, the words "the Chairman".

**§ 1.501 [Amended]**

28. In § 1.501 remove the word "his" and add, in its place, the words "the Secretary's or Deputy Secretary's".

**§ 1.505 [Amended]**

29. In § 1.505 remove the word "his" and add, in its place, the words "the Archivist's".

**§ 1.508 [Amended]**

30. In § 1.508(a) remove the word "he" and add, in its place, the words "the General Counsel".

**§ 1.514 [Amended]**

31. In § 1.514(a) and the first sentence of § 1.515, remove the word "hospital" and add, in its place, the words "medical center".

**§ 1.526 [Amended]**

32. In § 1.526(1) remove the word "Staff" and add, in its place, the word "staff".

**§ 1.582 [Amended]**

33. In § 1.582(c)(3)(iv) introductory text, remove the word "executive" and add, in its place, the word "Executive".

**§ 1.600 [Amended]**

34. In § 1.600 remove the last sentence.

**§ 1.620 [Amended]**

35. In § 1.620(c) remove the phrase "disease contracted on incurred" and add, in its place, the phrase "disease contracted or incurred".

**§ 1.701 [Amended]**

36. In § 1.701 remove the words "Gordon Boone" and add, in their place, the words "Marjorie M. Leandri, Chief,".

**§ 1.774 [Amended]**

37. In § 1.774(g)(2) remove the word "That" and add, in its place, the word "that".

**§ 1.780 [Amended]**

38. In § 1.780 remove the words "Pub. L. 95-563" where they appear.

**§ 1.912 [Amended]**

39. In § 1.912a(d)(2) remove the word "judgement" and add, in its place, the word "judgment".

40. Section 1.980(a) is revised to read as follows:

**§ 1.980 Scope.**

(a) The provisions set forth in §§ 1.980 through 1.994 of this part implement the Department of Veterans Affairs (VA's) authority for the use of salary offset to satisfy certain debts owed to the government.

\* \* \* \* \*

**§ 1.992(a) [Amended]**

41. In § 1.992(a) remove the word "installations" and add, in its place, the word "installments".

**PART 2—[AMENDED]****§ 2.50 [Amended]**

1. In § 2.50 Table of Contents and section heading remove the word "Department" and add, in its place, the word "Administration".

**§§ 2.50 and 2.69 [Amended]**

2. In §§ 2.50 and 2.69 table of contents and section heading and § 2.4 text remove the word "station" and add, in its place, the word "facility".

**§ 2.56 [Amended]**

3. In § 2.56 table of contents and section heading remove the word "hospitals" and add, in its place, the words "medical centers".

**§ 2.68a [Amended]**

4. In § 2.68a table of contents and section heading remove the word "him" and add, in its place, the words "the Director".

**§ 2.74 [Amended]**

5. In § 2.74 table of contents and section heading remove the word "Station" and add, in its place, the word "Facility".

6. In §§ 2.78 through 2.82, and 2.98, table of contents and section heading, remove the words "Education and Rehabilitation Service" and add, in their place, the words "Vocational Rehabilitation and Education Service".

**§§ 2.76 and 2.78 [Amended]**

7. In §§ 2.76 and 2.78 table of contents and section heading remove the word "him" and add, in its place, the words "the Chief Benefits Director".

**§ 2.81 [Amended]**

8. In § 2.81 table of contents remove the word "state" and add, in its place, the word "State".

**§§ 2.84 and 2.87 [Amended]**

9. In §§ 2.84 and 2.87 table of contents and section heading remove the word "his" before the word "designee".

**§ 2.90 [Amended]**

10. In § 2.90 table of contents and section heading remove the word "his" and add, in its place, the words "the Chief Benefits Director's".

**§ 2.91 [Amended]**

11. In § 2.91 table of contents and section heading remove the word "his" and add, in its place, the words "the Chief Medical Director's".

**§ 2.92 [Amended]**

12. In § 2.92 table of contents and section heading remove the word "agency" and add, in its place, the word "Department".

**§ 2.94 [Amended]**

13. In § 2.94 table of contents and section heading remove the word "his" before the word "designated".

**§§ 2.91 and 2.98 [Amended]**

14. In §§ 2.91 and 2.98 table of contents and section heading remove the word "stations" and add, in its place, the word "facilities".

**§ 2.1 [Amended]**

15. In § 2.1(a) remove the word "form" and add, in its place, the word "Form".

**§ 2.4 [Amended]**

16. In § 2.4 remove the word "departments" and add, in its place, the word "administrations".

17. In § 2.6(d) remove the word "Department" and add, in its place, the word "Administration".

18. In §§ 2.6(d) and 2.7(c) remove the word "department" and add, in its place, the word "administration".

19. In § 2.6(d) remove the words "the VA" and add, in their place, the word "VA".

20. In § 2.6 the section heading and paragraph (f)(1) are revised to read as follows:

**§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 212(a)).**

\* \* \* \* \*

(f) \* \* \*

(1) To act on all matters assigned to the National Cemetery System by statute (38 U.S.C. Chapter 24) and by regulation except where specifically requiring the personal attention or action of the Secretary and to authorize supervisory personnel within the jurisdiction of the Director, National



Cemetery System, to perform such functions as may be assigned.

#### § 2.7 [Amended]

21. In § 2.7(a) remove the word "he" and add, in its place the words "the Secretary".

### PART 3—[AMENDED]

1. In §§ 3.7(b), 3.103(b), 3.103(c), and 3.655(f) remove the word "he" and add, in its place, the words "he or she".

2. In §§ 3.7, 3.8, 3.9, 3.103, 3.105, 3.114, 3.155, 3.450, 3.654, 3.703, and 3.1000 remove the word "his" and add, in its place, the words "his or her" in the following places:

- (a) Section 3.7(b);
- (b) Section 3.8(d)(1);
- (c) Section 3.9(a)(4) and (b);
- (d) Section 3.103(a), (c), and (e);
- (e) Section 3.105 introductory text;
- (f) Section 3.114(b);
- (g) Section 3.155(a);
- (h) Section 3.450(a)(1)(i);
- (i) Section 3.654(c);
- (j) Section 3.703(b); and
- (k) Section 3.1000(a)(1) (i) through (iii).

#### § 3.114 [Amended]

3. In §§ 3.114(a) introductory text and 3.342(b)(5) remove the word "his" and add, in its place, the words "the Secretary's".

#### §§ 3.103 and 3.704 [Amended]

4. In §§ 3.103 (a), (c), and (e) and 3.704(b) remove the word "him" and add, in its place, the words "him or her".

#### § 3.100 [Amended]

5. In § 3.100 remove the word "him" and add, in its place, the words "the Director".

#### § 3.1604 [Amended]

6. In § 3.1604 (a), (c), (d)(1) (iii) and (iv), (d)(2), and (d)(3) remove the word "state" and add, in its place, the word "State".

7. In §§ 3.27, 3.151, 3.152, 3.157, 3.311, 3.556, 3.557, 3.558, 3.808, 3.812, 3.813, 3.905, 3.1600, and 3.1612 remove the words "the VA" and add, in their place, the words "VA" in the following places:

- (a) Section 3.27 (a) and (b);
- (b) Section 3.151 (a) and (b);
- (c) Section 3.152(a);
- (d) Section 3.157(b)(1);
- (e) Section 3.311(b)(d)(1);
- (f) Section 3.556(e);
- (g) Section 3.557 (a) and (b)(1);
- (h) Section 3.558(c) (1) and (2);
- (i) Section 3.808(c);
- (j) Section 3.812(b)(5);
- (k) Section 3.905(b)(5);
- (l) Section 3.1600(c);
- (m) Section 3.1612(e)(2) (ii), (iii) and (g).

#### § 3.812 [Amended]

9. In § 3.812(d) remove the words "The VA" and add, in their place, the word "VA".

#### § 3.1612 [Amended]

9. In § 3.1612(e)(2)(iii) remove the words "the VA's" and add, in their place, the word "VA's".

#### § 3.1 [Amended]

10. In § 3.1(y)(2) introductory text remove the phrase in the last sentence which reads "POW (prisoner of war)" and add, in its place, the phrase "prisoner of war POW".

#### § 3.12 [Amended]

11. In § 3.12(k)(2) remove the word "title" and add, in its place, the word "part".

#### § 3.26 [Amended]

12. a. In § 3.26(c)(2) remove the word "bemade" and add, in its place, the words "be made".

b. In § 3.26(d) remove the word "parragraph" and add, in its place, the word "paragraph".

#### § 3.28 [Amended]

13. a. In § 3.28(b) remove the word "aveteran" and add, in its place, the words "a veteran".

b. In § 3.28(b) undesignated flush paragraph remove the word "increase" and add, in its place, the word "increases".

#### §§ 3.151 and 3.400 [Amended]

14. In § 3.151(b) and 3.400(b) remove the word "chapter" and add, in its place, the word "part".

#### §§ 3.210 and 3.213 [Amended]

15. In § 3.210(c)(2) and 3.213(a)(3) remove the word "veterans" and add, in its place, the word "veteran".

16. In § 3.272(f)(2)(iii) the first line is revised to read as follows:

#### § 3.272 Exclusions from income.

- (f) \* \* \*
- (2) \* \* \*
- (iii) They were or will be in excess of 5 percent of \* \* \* .

#### § 3.304 [Amended]

17. In § 3.304(b)(1) remove the word "along" and add, in its place, the word "alone".

#### § 3.312 [Amended]

18. In § 3.312(c)(3) remove the word "vital" and add, in its place, the word "vital".

19. In § 3.350(f)(2)(vii)(C) remove the words "which ratable" and add, in their place, the words "which is ratable".

#### § 3.371 [Amended]

20. In § 3.371(c) remove the words "Military" and "military" where they appear and add, in their place, the words "Miliary" and "miliary".

#### §§ 3.401 and 3.454 [Amended]

21. In § 3.401(d)(2) and 3.454(a) headings, remove the word "hospital" and add, in its place, the words "medical center".

#### § 3.402 [Amended]

22. In § 3.402(c)(1) in the second sentence, remove the phrase "DIC (dependency and indemnity compensation)" and add, in its place the phrase "dependency and indemnity compensation (DIC)".

### PART 4—[AMENDED]

#### § 4.29 [Amended]

In § 4.29(g) remove the citation "§ 3.321(b)" and add, in its place "§ 3.321(b)(1)".

### PART 6—[AMENDED]

#### § 6.164 [Amended]

1. In § 6.164 table of contents and section heading, remove the word "title" and add, in its place, the word "Title".

2. In §§ 6.56, 6.63, 6.123(c)(b), 6.150, and 6.162b remove the word "his" and add, in its place, the words "his or her".

#### § 6.69 [Amended]

3. In § 6.69(a) remove the word "He" and add, in its place, the words "He or she".

#### § 6.150 [Amended]

4. In § 6.150 remove the word "he" and add, in its place, the words "he or she".

#### § 6.155 [Amended]

5. In § 6.155(b) remove the word "He" and add, in its place, the words "The Chief Benefits Director".

### PART 7—[AMENDED]

#### § 7.14 [Amended]

In § 7.14 remove the word "his" and add, in its place, the words "his or her".

### PART 9—[AMENDED]

#### § 9.5 [Amended]

a. In § 9.5(b)(3) remove the word "Secretary" and add, in its place, the words "Secretary of Veterans Affairs".

b. In § 9.10(b) remove the phrase "purchased by the Secretary under 38 U.S.C. 766," and add, in its place, the phrase "purchased by the Secretary of Veterans Affairs under 38 U.S.C. 766".

c. In §§ 9.10(c) second sentence and (e) first sentence remove the word "Secretary" and add, in its place, the words "Secretary of Veterans Affairs".



d. In § 9.10(f) the second sentence is revised to read as follows:

**§ 9.10 Deductions from pay.**

(f) \* \* \* Such regulations shall prescribe such procedures as the Secretary of Defense, after consultation with the Secretary of Veterans Affairs, may consider necessary to ensure that such functions are carried out in a timely and complete manner and in accordance with the provisions of the section, including specifically the provisions of paragraph (e) relating to contributions from appropriations made for active duty pay.

(Authority: 38 U.S.C. 769)

e. In § 9.12 the first sentence is revised to read as follows:

**§ 9.12 Payment from extra hazards.**

For each month for which any member is insured under Group Policy No. G-3200 there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary of Veterans Affairs and certified by the Secretary concerned to be the cost of such insurance which is traceable to the extra hazard of duty in the uniformed services.

f. Section 9.12 is further amended by removing the word "Secretary" where it appears after the first sentence and adding, in its place, the words "Secretary of Veterans Affairs."

**PART 11—[AMENDED]**

**§ 11.104 [Amended]**

In § 11.104 add the numbers "20420" after the words "Washington, DC".

**PART 12—[AMENDED]**

1. The designated center heading for §§ 12.0 through 12.13 is revised by removing the words "On Station" and adding, in its place, the words "At Facility".

**§ 12.0 [Amended]**

2. In § 12.0(a) remove the word "hospitals" and add, in its place, the words "medical centers".

3. In § 12.0 (a) and (b) remove the word "stations" and add, in its place, the word "facilities".

4. In §§ 12.1, 12.3, 12.4, 12.5, 12.6, 12.7, 12.8, 12.9, 12.12, 12.13, 12.15, and 12.23 remove the word "station" and add, in its place, the word "facility" in the following places:

- (a) Section 12.1 (a) and (b);
- (b) Section 12.3 (a) introductory text, (a)(4);

(c) Section 12.4 (a) introductory text and undesignated flush paragraph, (a)(1), (a)(3), (a)(4), and (b);

- (d) Section 12.5(a);
- (e) Section 12.6(a)(3);
- (f) Section 12.7;
- (g) Section 12.8 (a) and (c);
- (h) Section 12.9 (a), (c), (g)(1);
- (i) Section 12.12;
- (j) Section 12.13;
- (k) Section 12.15; and
- (l) Section 12.23.

5. In §§ 12.0, 12.1, 12.2, 12.4, 12.5, 12.6, 12.8, 12.9, 12.12, 12.16, 12.17, 12.19, and 12.21 remove the word "his" and add, in its place, the words "his or her" in the following places:

- (a) Section 12.0(b);
- (b) Section 12.1(a);
- (c) Section 12.2(a);
- (d) Section 12.4 (a) introductory text, (a)(1), (a)(3), (a)(6), and (b);
- (e) Section 12.5(a);
- (f) Section 12.6(a) (1), (2) and (3);
- (g) Section 12.8 (a) and (b);
- (h) Section 12.9 (a), (c), (d), (e), and (i);
- (i) Section 12.12;
- (j) Section 12.16(b);
- (k) Section 12.17(a);
- (l) Section 12.19 (a) and (b); and
- (m) Section 12.21.

6. In §§ 12.1(a), 12.2(a), 12.3(a)(1), 12.3(a)(5), 12.4(a) undesignated flush paragraph, 12.6(a)(3), 12.9(a), and 12.16(b) remove the word "he" and add, in its place, the words "he or she".

**§ 12.1 [Amended]**

7. In § 12.1(a) remove the word "He" and add, in its place, the words "He or she".

**§ 12.2 [Amended]**

8. In § 12.2(a) remove the word "himself" and add, in its place, the words "himself or herself".

9. In §§ 12.4(c), 12.9(a), 12.10, and 12.16(b) remove the word "him" and add, in its place, the words "him or her".

**§ 12.9 [Amended]**

10. In § 12.9(a) remove the words "the VA" and add, in their place, the word "VA".

**PART 13—[AMENDED]**

1. In §§ 13.1, 13.2(a), 13.3 remove the word "station" and add, in its place, the word "facility".

2. In §§ 13.64, 13.71(b), 13.102(a), and 13.108 remove the words "the VA" and add, in their place, the word "VA".

**§ 13.109 [Amended]**

3. In § 13.109(d)(7) remove the word "title" and add, in its place, the word "chapter".

**PART 14—[AMENDED]**

1. Section 14.502 is revised to read as follows:

**§ 14.502 Requests for legal opinions from Central Office.**

Requests for formal legal advice, including interpretation of law or regulations, shall be made only by the Secretary, the Deputy Secretary, the Assistant Secretaries, the Deputy Assistant Secretaries, and the administration head or top staff office official having jurisdiction over the particular subject matter, or by a subordinate acting for any such official.

**§§ 14.501 and 14.503 [Amended]**

2. In §§ 14.501(e) and 14.503(b) remove the word "department" and add, in its place, the word "administration".

**§ 14.503 [Amended]**

3. In § 14.503(b) remove the word "benefits" and add, in its place, the word "benefits".

4. In §§ 14.514(b), 14.515 footnote number 1, 14.518(a), 14.561, 14.605(a) (1) through (4), and 14.632 remove the word "station" and add, in its place, the word "facility".

**§ 14.515 [Amended]**

5. In § 14.515(c)(1) remove the word "administrator" and add, in its place, the word "Secretary".

**§ 14.560 [Amended]**

6. In § 14.560(b) remove the words "the VA" and add, in their place, the word "VA".

**§ 14.600 [Amended]**

7. In § 14.600(b)(3) remove the word "without" and add, in its place, the word "without".

**§ 14.603 [Amended]**

8. In § 14.603(a)(5) remove the word "presentd" and add, in its place, the word "presented".

**§ 14.605 [Amended]**

9. In § 14.605(a)(3) remove the word "stations" and add, in its place the word "facilities".

10. In §§ 14.607(b), 14.608 (a) and (b), and 14.609, remove the word "agency" and add, in its place, the word "Department".

**PART 15—[AMENDED]**

Section 15.170(c) is revised to read as follows:

**§ 15.170 Compliance procedures.**



(c) The Deputy Assistant Secretary for Equal Employment Opportunity shall be responsible for coordinating implementation of this section. Complaints may be sent to the Secretary of Veterans Affairs or the Deputy Assistant Secretary for Equal Employment Opportunity at the following address: Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

## PART 17—[AMENDED]

### § 17.501 [Amended]

1. In § 17.501 table of contents and section heading remove the word "Departmental" and add, in its place, the word "Administration".
2. In §§ 17.34, 17.45, 17.47, 17.48, 17.50b, 17.51, 17.51d, 17.51e, 17.51g, 17.56, 17.60, 17.62, 17.80a, 17.85, 17.100, 17.177, 17.521, 17.522, 17.527, and 17.534 remove the words "the VA" and add, in their place, the word "VA" in the following places:
  - (a) Section 17.34(a)(3);
  - (b) Section 17.45(a);
  - (c) Section 17.47(b)(1) and (2);
  - (d) Section 17.48(b)(1);
  - (e) Section 17.48(d)(5) and (6), (e)(6), (e)(7), (g)(1)(ii), and (l);
  - (f) Section 17.50b(a)(2)(ii) and (iii), and (a)(6);
  - (g) Section 17.51(a)(3), (4), and (5), (b)(1) and (b)(3);
  - (h) Section 17.51c;
  - (i) Section 17.51d(a)(2) and (3);
  - (j) Section 17.51e(a) and (b);
  - (k) Section 17.51g(b);
  - (l) Section 17.56(b);
  - (m) Section 17.60(c), (j) introductory text and (j)(l);
  - (n) Section 17.62(h)(2)(ii);
  - (o) Section 17.80a(b);
  - (p) Section 17.85(b)(1);
  - (q) Section 17.100(k);
  - (r) Section 17.177(k)(3) and (x) introductory text;
  - (s) Section 17.521(a);
  - (t) Section 17.522;
  - (u) Section 17.527(a); and
  - (v) Section 17.534(a) introductory text, (b)(1) through (4), and (j).

### §§ 17.166c and 17.177 [Amended]

3. In §§ 17.166c and 17.177(x)(4)(i)(B) remove the words "The VA" and add, in their place, the word "VA".
4. In §§ 17.500(a), 17.503(c) and (d), 17.505 introductory text, 17.507(a) introductory text and 17.507(a)(4)(xi), 17.508(c)(4) introductory text, 17.509(a), 17.519(b)(4) and (7), 17.521(a), 17.527(i), and 17.534(c) remove the words "Medical Facility" and add, in their place, the words "medical facility".

### §§ 17.505 and 17.507 [Amended]

5. In §§ 17.505 and 17.507(a)(4)(xi) remove the words "Medical Facility's" and add, in their place, the words "medical facility's".

### § 17.519 [Amended]

6. In § 17.519(b)(7) remove the words "Medical Facilities" and add, in their place, the words "medical facilities".

### § 17.62 [Amended]

7. In § 17.62(a) remove the word "he" and add, in its place, the words "he or she".

### § 17.115a [Amended]

8. In § 17.115a remove the word "him" and add, in its place, the words "him or her".

### § 17.115b [Amended]

9. In § 17.115b remove the words "he", "his", and "himself" and add, in their place, the words "he or she", "his or her", and "himself or herself" respectively.

### §§ 17.64 and 17.65a [Amended]

10. In §§ 17.64(a), 17.65a introductory text, and 17.65a(a) remove the word "station" and add, in its place, the word "facility".

### §§ 17.64 and 17.527 [Amended]

11. In §§ 17.64(b) and 17.527(j) remove the words "Public Law" and add, in their place the words "Pub. L.".

### § 17.115 [Amended]

12. In § 17.115(a) remove the phrase "§ 17.60 (a) through (d) and (f) through (i)" and add, in its place, the phrase "§ 17.60 (a) through (d), and (k) through (m)".

### § 17.115b [Amended]

13. In § 17.115b(a) remove the words "38 U.S.C. 314(1)(p)" and add, in their place, the words "38 U.S.C. 314(r)".

### § 17.115c [Amended]

14. In § 17.115c(a) designate paragraph (a) as paragraph (a)(1) and remove the words "38 U.S.C. 314(1)(p)" and add in their place, the words "38 U.S.C. 314(r)".

15. In §§ 17.210(d)(1), 17.367, 17.403(3), 17.404(a), 17.404(e)(2), 17.405(a), 17.406, 17.410(b), 17.411(a), and 17.412, remove the word "Secretary" where it stands alone and add, in its place, the words, "Secretary of Veterans Affairs".

### § 17.508 [Amended]

16. In § 17.508(c)(2) remove the phrase "38 CFR § 17.508(c)(2)" and add, in its place, the phrase "38 CFR 17.508(c)(2)".

17. In § 17.508(c)(5) remove the word "Agency" and add, in its place, the word "Department".

### § 17.534 [Amended]

18. In § 17.534(a) remove the words "the VA's" and add, in their place, the word "VA's".

19. In §§ 17.48(b)(1), 17.48(d)(5), 17.168, 17.173(a)(4) and 17.173(b)(10) remove the word "title" and add, in its place, the word "chapter".

### § 17.48 [Amended]

20. In § 17.48(g)(1)(ii) remove the word "Secretary" and add, in its place the words "the Secretary".

### § 17.58 [Amended]

21. In § 17.58(c)(5) remove the word "psyciatrist" and add, in its place, the word "psychiatrist".

22. In §§ 17.47(a)(6), 17.50b(a)(2)(iii), 17.60(i) and (j)(2)(ii), and 17.60(a)(1) remove the words "Mexican Border Period" and add, in their place, the words "Mexican border period".

### § 17.60 [Amended]

23. In § 17.60(i) remove the phrase "or World War I" and add, in its place, the phrase "of World War I".

24. Section 17.160 is revised as follows:

### § 17.160 Organization.

The Veterans Canteen Service (VCS), established by Pub. L. 636, 79th Congress, as amended, will function as a unit within the Veterans Health Services and Research Administration and will have exclusive responsibility for all its activities. To effectuate the purpose of the act, an organization has been established consisting of a VCS central office located at Washington, DC, and a canteen at each Department of Veterans Affairs hospital, center, and domiciliary.

### § 17.161 [Amended]

25. In § 17.161(a) remove the words "veterans canteen service" and add, in their place, the words "Veterans Canteen Service".

### § 17.173 [Amended]

26. In § 17.173(e)(3) remove the phrase "subparagraph (1) of this paragraph" and add, in its place, the phrase "paragraph (e)(1) of this section."

27. Section 17.210(d)(2) is revised to read as follows:

### § 17.210 Sharing specialized medical resources.

\* \* \* \* \*

(d) \* \* \*

(2) Procedures jointly prescribed by the Secretary of Health and Human Services and the Secretary of Veterans Affairs to assure reasonable quality of



care and service and efficient and economical utilization of resources.

28. In § 17.400, the first sentence is revised to read as follows:

**§ 17.400 Purpose and scope of the program.**

The provisions of §§ 17.400 through 17.416 are applicable to a program of grants and other forms of assistance under the "Veterans' Administration Medical School Assistance and Health Manpower Training Act of 1972" as amended by the Veterans Omnibus Health Care Act of 1976 (Pub. L. 94-581), the Veterans' Administration Programs Extension Act of 1978 (Pub. L. 94-520), the Veterans Health Programs Extension and Improvement Act of 1979 (Pub. L. 96-151), and the Veterans' Administration Health Care Amendments of 1980 (Pub. L. 96-330). (38 U.S.C. Chapter 82).

29. In § 17.402 paragraph (a) is revised to read as follows:

**§ 17.402 Definitions.**

(a) The "Secretary" means the Secretary of Veterans Affairs.

**PART 18—[AMENDED]**

1. In §§ 18.405(e), 18.541(a), 18.542 (b) introductory text and (c); 18.543 (a) introductory text, (c) and (e); 18.544 (a)(1), (a)(2), and (a)(3); 18.546 (a) introductory text, (b), (c) introductory text, (d) introductory text, and (d)(2), and 18.550(a)(2) remove the words "The VA" and add, in their place, the word "VA".

2. In §§ 18.532, 18.533 (a) and (b)(1), 18.534 (a) and (b), 18.541(b), 18.542 (a) and (c), 18.543 (c) and (g), 18.544 (a)(2) and (a)(4) and (b), 18.545(b), 18.546 (a)(1), (b), (d) introductory text, (d)(1), 18.547, 18.548, 18.549(a), and 18.550 (a)(1) and (b) introductory text remove the words "the VA" and add, in their place, the word "VA".

3. In § 18.501 the first sentence is revised to read as follows:

**§ 18.501 Purpose.**

The purpose of these regulations is to set out Department of Veterans Affairs (VA) policies and procedures under the Age Discrimination Act of 1975 and the governmentwide age discrimination regulations at 45 CFR Part 90. \* \* \*

**PART 18—[AMENDED]**

**APPENDIX A TO SUBPART E—  
STATUTORY PROVISIONS TO WHICH  
THIS SUBPART APPLIES**

4. In Appendix A to Subpart E, number 10 reads as follows:

10. Veterans' Administration Health Professional Scholarship Program (38 U.S.C. 4141-4146).

**PART 18a—[AMENDED]**

1. In § 18a.1 the table of contents and section heading is revised to read as follows:

**§ 18a.1 Delegations of responsibility between the Secretary of Veterans Affairs and the Secretary, Department of Health and Human Services, and the Secretary, Department of Education.**

**§ 18a.2 [Amended]**

2. In § 18a.2 remove the word "Secretary" and add, in its place, the words "Secretary of Veterans Affairs".

3. In § 18a.2 remove the word "stations" and add, in its place, the word "facilities".

**PART 18b—[AMENDED]**

1. In the table of contents and text, the undesignated center heading which appears before § 18b.77 is revised to read as follows:

**Posthearing Department Actions**

2. In §§ 18b.16, 18b.74(c), and 18b.77 table of contents and section heading, remove the word "agency" and add, in its place, the word "Department".

**§ 18b.73 [Amended]**

3. In § 18b.73 remove the words "the VA" and add, in their place, the word "VA".

**PART 21—[AMENDED]**

1. In §§ 21.1022, 21.3022, and 21.4022 table of contents and section headings, remove the words "the VA" and add, in their place, the word "VA".

**§ 21.222 [Amended]**

2. In § 21.222 redesignate paragraph (b) as paragraph (b)(1).

3. a. In § 21.4201 (c)(3)(iii) remove the fourth level paragraph designations of (a) through (b) and add (A) and (B) in their place.

b. In § 21.4201(c)(3)(iv) remove the fourth level paragraph designations of (a) through (c) and add (A) through (C) in their place.

c. In § 21.4201(e)(1)(i) remove the fourth level paragraph designations of (a) through (b) and add (A) and (B) in their place.

d. In § 21.4201(e)(3)(ii) remove the fourth level paragraph designations (a) through (c) and add (A) through (C) in their place.

e. In §§ 21.4265(f)(2)(vi) and 21.4500(d)(2)(i) remove the fourth level paragraph designations of (a) through (g) and (a) through (h) respectively and add (A) through (G) and (A) through (H) respectively in their place.

**§ 21.5740 [Amended]**

4. In § 21.5740 redesignate the second paragraph (b)(2) as (b)(3).

5. a. In §§ 21.78, 21.126, 21.132, 21.148, 21.152, 21.162, 21.180, 21.182, 21.184, 21.186, 21.188, 21.190, 21.192, 21.194, 21.196, 21.197, 21.198, 21.210, 21.212, 21.214, 21.220, 21.222, 21.240, 21.242, 21.252, 21.256, 21.257, 21.258, 21.260, 21.262, 21.264, 21.266, 21.272, 21.274, 21.276, 21.284, 21.290, 21.292, 21.294, 21.296, 21.310, 21.322, 21.324, 21.330, 21.332, 21.340, 21.350, 21.362, 21.364, 21.370, 21.372, 21.376, 21.380, 21.382, 21.390, 21.400, 21.402, 21.412, 21.420, 21.1022, 21.1045, 21.3300, 21.3333, 21.4005, 21.4131, 21.4135, 21.4136, 21.4137, 21.4201, 21.4203, 21.4207, 21.4230, 21.4236, 21.4252, 21.4258, 21.4260, 21.4272, 21.4505, 21.5022, 21.5042, 21.5054, 21.5064, 21.5100, 21.5103, 21.5132, 21.5138, 21.5145, 21.5230, 21.5296, 21.5725, 21.5730, 21.5732, 21.5740, 21.5743, 21.5744, 21.5810, 21.5812, 21.5820, 21.5822, 21.5831, 21.5834, 21.5835, 21.5870, 21.5900, 21.5901, 21.6005, 21.6015, 21.6040, 21.6050, 21.6054, 21.6056, 21.6058, 21.6070, 21.6210, 21.6240, 21.6242, 21.6284, 21.6370, 21.6507, 21.6509, 21.6513, 21.6517, 21.7020, 21.7030, 21.7032, 21.7042, 21.7044, 21.7046, 21.7050, 21.7051, 21.7072, 21.7074, 21.7076, 21.7100, 21.7112, 21.7114, 21.7120, 21.7122, 21.7131, 21.7133, 21.7135, 21.7137, 21.7139, 21.7140, 21.7144, 21.7153, 21.7154, 21.7156, 21.7159, 21.7170, 21.7200, 21.7220, 21.7301, 21.7302, 21.7305, 21.7307, 21.7310, 21.7520, 21.7530, 21.7532, 21.7551, 21.7576, 21.7600, 21.7612, 21.7614, 21.7620, 21.7622, 21.7624, 21.7631, 21.7633, 21.7635, 21.7636, 21.7639, 21.7640, 21.7644, 21.7653, 21.7656, 21.7658, 21.7659, 21.7670, 21.7700, 21.7720, 21.7801, 21.7802, 21.7805, 21.7807, and 21.7810 remove the words "the VA" and add, in their place, the word "VA".

- (1) Section 21.78(b)(3);
- (2) Section 21.126(d)(2)(ii);
- (3) Section 21.132(a);
- (4) Section 21.148 (a) and (b);
- (5) Section 21.152(c);
- (6) Section 21.162(b)(2);
- (7) Section 21.180(d);
- (8) Section 21.182(a)(2);
- (9) Section 21.184(c)(2) introductory text, (c)(2)(i) and (c)(2)(iii);
- (10) Section 21.186 (a) and (b);
- (11) Section 21.188(a)(2), and (d) (4) through (6);



- (12) Sections 21.190(a)(2), (e) (2), (3), and (6);
- (13) Sections 21.192 (a)(1) and (2), and (d) (3) through (5);
- (14) Sections 21.194 (d) (3) and (4);
- (15) Sections 21.196(b)(4)(iii);
- (16) Section 21.197(a);
- (17) Section 21.198(b);
- (18) Section 21.210(b);
- (19) Sections 21.212 (b), (c), and (e);
- (20) Sections 21.214 (c) introductory text, and (c) (1) and (2);
- (21) Sections 21.220(a) (1) and (2), (b), and (c);
- (22) Sections 21.222 introductory text, (b)(1) introductory text, (b)(1)(iii), (b)(1)(v), (b)(2), and (c);
- (23) Section 21.240(a);
- (24) Section 21.242(b);
- (25) Section 21.252(a)(1);
- (26) Section 21.256(b)(1)(iii);
- (27) Section 21.257(b)(2);
- (28) Section 21.258(d);
- (29) Section 21.260(c);
- (30) Section 21.262(a);
- (31) Section 21.264(a)(3);
- (32) Section 21.266 (a)(1), (b)(1)(ii), (b)(2), and (d);
- (33) Section 21.272 (b) introductory text, (c)(4), (d)(1), (g) introductory text, and (g)(1);
- (34) Section 21.274(f)(2);
- (35) Section 21.276(c);
- (36) Section 21.284(c);
- (37) Section 21.290 (a) introductory text and (a)(1);
- (38) Section 21.292(b);
- (39) Section 21.294(a)(4) (i) and (ii), (b)(2)(iii), (e), and (j);
- (40) Section 21.296(a)(10);
- (41) Section 21.310 (a)(2) introductory text, (a)(2)(iii), (a)(5);
- (42) Section 21.322(c)(1) (ii) and (iii), (c)(2)(i) (B) and (C), and (e)(1)(ii) introductory text;
- (43) Section 21.324 (e)(4), (g)(1) and (g)(2) introductory text, (h)(1), (i) introductory text, and (i)(2);
- (44) Section 21.330(a);
- (45) Section 21.332 (a) and (c)(2);
- (46) Section 21.340(b);
- (47) Section 21.350 (a)(1) and (b);
- (48) Section 21.362(c)(4);
- (49) Section 21.364(a);
- (50) Section 21.370(b)(2)(x);
- (51) Section 21.372(b)(10);
- (52) Section 21.376;
- (53) Section 21.380(a);
- (54) Section 21.382(b);
- (55) Section 21.390(a) introductory text;
- (56) Section 21.400(b)(2);
- (57) Section 21.402(c)(2);
- (58) Section 21.412(a)(1);
- (59) Section 21.420(d) (1) through (3);
- (60) Section 21.1022(b) heading;
- (61) Section 21.1045(c)(3);
- (62) Section 21.3333(b);
- (63) Section 21.4005(a)(1);
- (64) Section 21.4131(a)(3)(ii);
- (65) Section 21.4135 (p), (w)(1) and (w)(2) introductory text;
- (66) Section 21.4136 footnote 5 to table under (a), and (k)(4);
- (67) Section 21.4137(g)(2) (iv) and (v) introductory text, (g)(2)(v)(B), and (h)(4);
- (68) Section 21.4201(e)(2), (f)(1)(i), and (h) introductory text and (b)(3);
- (69) Section 21.4203(b)(1);
- (70) Section 21.4207 introductory text;
- (71) Section 21.4230(d) introductory text;
- (72) Section 21.4236(c);
- (73) Section 21.4252 (l)(2), (l)(2)(ii)(B), (l)(3) introductory text and (l)(3)(ii)(B);
- (74) Section 21.4258(d)(3);
- (75) Section 21.4260(b)(4) and (c)(2);
- (76) Section 21.4272(g)(2) introductory text;
- (77) Section 21.4505(d);
- (78) Section 21.5022(b)(2);
- (79) Section 21.5042(b) introductory text, (d)(2) and (d)(3) and (f);
- (80) Section 21.5054(b)(2)(ii);
- (81) Section 21.5064(b)(4)(iii);
- (82) Section 21.5100(d) introductory text;
- (83) Section 21.5103(a) introductory text;
- (84) Section 21.5132(a) introductory text;
- (85) Section 21.5138(a)(3);
- (86) Section 21.5145(b) introductory text, (c) (2) and (4), (d)(1), (f), (g)(1), (g)(1)(i) and (h) introductory text;
- (87) Section 21.5230;
- (88) Section 21.5296(b)(2), (d)(2), (f), and (g)(2);
- (89) Section 21.5725(a)(1) and (a)(2), (b) introductory text;
- (90) Section 21.5730 (a), (b), and (c);
- (91) Section 21.5732 (a), (b), and (c) introductory text;
- (92) Section 21.5740(b)(3);
- (93) Section 21.5743(e) introductory text;
- (94) Section 21.5744(a)(1) introductory text and (b)(1) and (b)(2) introductory text;
- (95) Section 21.5810(a);
- (96) Section 21.5812 (a)(1) and (b)(3);
- (97) Section 21.5820(c);
- (98) Section 21.5822(a) introductory text, (b)(1)(iii), and (c);
- (99) Section 21.5831(d);
- (100) Section 21.5834(a);
- (101) Section 21.5835, (b), (c)(2), (d), (f), (j) introductory text and (k) introductory text;
- (102) Section 21.5870(b)(1) and (b)(2) introductory text and (c)(1);
- (103) Section 21.5900;
- (104) Section 21.5901(a);
- (105) Section 21.6005(c);
- (106) Section 21.6015(a) and (b);
- (107) Section 21.6040(a)(3) and (5), (b)(2)(ii) and (iii);
- (108) Section 21.6050(b);
- (109) Section 21.6054(a), (e) introductory text, (e)(1) and (e)(3);
- (110) Section 21.6056(b) and (c);
- (111) Section 21.6058(a);
- (112) Section 21.6070(d) introductory text and (e)(2);
- (113) Section 21.6210(b);
- (114) Section 21.6240(a);
- (115) Section 21.6242(b);
- (116) Section 21.6284(b) introductory text;
- (117) Section 21.6370(b) and (c) introductory text;
- (118) Section 21.6507(a) and (b);
- (119) Section 21.6509(a) introductory text and (b);
- (120) Section 21.6513(c);
- (121) Section 21.6517(a) and (c);
- (122) Section 21.7020(b)(16), (b)(19) introductory text, and (b)(25)(i)(A);
- (123) Section 21.7030(a)(1) and (b);
- (124) Section 21.7032(b), (c), (d), and (e) introductory text;
- (125) Section 21.7042 introductory text and (b)(8);
- (126) Section 21.7044 introductory text, (b)(7), and (b)(9);
- (127) Section 21.7046(b)(5);
- (128) Section 21.7050(a) introductory text;
- (129) Section 21.7051(b)(2)(i) and (ii);
- (130) Section 21.7072(e) introductory text;
- (131) Section 21.7074 introductory text;
- (132) Section 21.7076(b)(2) and (d)(4);
- (133) Section 21.7100 introductory text;
- (134) Section 21.7112(a);
- (135) Section 21.7114;
- (136) Section 21.7120(a), (b)(2), and (b)(2)(iii);
- (137) Section 21.7122(d);
- (138) Section 21.7131(a)(2) and (3), (d), (e)(1)(iii), (e)(2)(i)(B) and (C);
- (139) Section 21.7133;
- (140) Section 21.7135(d)(4), (e)(1), (e)(2) introductory text, (f)(2) and (3), (h)(1) through (4), (i) introductory text, (i)(2), (j)(2), (k) introductory text, (m), (o), (t), (y), and (z);
- (141) Section 21.7137(a);
- (142) Section 21.7139(a)(4)(ii), (b)(2), (c) introductory text, (c)(1), (e)(1)(ii), (e)(2)(i), (f)(1)(ii), and (f)(2)(i);
- (143) Section 21.7140(b)(1) and (b)(3);
- (144) Section 21.7144(a), (b)(2), and (c);
- (145) Section 21.7153(b);
- (146) Section 21.7154 introductory text;
- (147) Section 21.7156(a) and (b);
- (148) Section 21.7159;
- (149) Section 21.7170 introductory text;
- (150) Section 21.7200 introductory text;
- (151) Section 21.7220(a)(1)(iii) and (b) introductory text;
- (152) Section 21.7301;
- (153) Section 21.7302(b), (c) introductory text, and (c)(2);
- (154) Section 21.7305;
- (155) Section 21.7307;



- (156) Section 21.7310(b);  
 (157) Section 21.7520(b)(14);  
 (158) Section 21.7530 (a) and (b);  
 (159) Section 21.7532 (b), (c), (d), and (e) introductory text;  
 (160) Section 21.7551(b)(2) (i) and (ii);  
 (161) Section 21.7576 (b)(2) and (d)(4);  
 (162) Section 21.7600 introductory text;  
 (163) Section 21.7612 (a) and (b);  
 (164) Section 21.7614;  
 (165) Section 21.7620(a);  
 (166) Section 21.7622 (a), (d)(2), (d)(2)(iii), (e), and (f) introductory text;  
 (167) Section 21.7624(b);  
 (168) Section 21.7631 (a)(3) and (d);  
 (169) Section 21.7633;  
 (170) Section 21.7635 (b)(1), (b)(2) introductory text, (c)(1) through (5), (d)(1) and (d)(2) introductory text, (e) introductory text, (e)(2), (f)(2), (g) introductory text, (j), (n), (p), (q)(2), (r), (u), and (v);  
 (171) Section 21.7636(b)(3);  
 (172) Section 21.7639 (a)(4)(ii), (b)(2), (c) introductory text, (c)(2)(ii), (d)(1)(ii)(B), (d)(2)(i), (d)(3) introductory text, and (d)(3)(i);  
 (173) Section 21.7640 (a)(2), (b)(1) and (b)(3), (c)(2), (d)(4), and (e);  
 (174) Section 21.7644 (a), (b)(2), (c)(2) introductory text, and (d);  
 (175) Section 21.7653 (b), (c) introductory text and (c)(1) introductory text and (c)(2);  
 (176) Section 21.7656 (a) and (b) introductory text;  
 (177) Section 21.7658(b)(2);  
 (178) Section 21.7659;  
 (179) Section 21.7670 introductory text, (a) introductory text, (d)(1), (d)(1)(i), (e) introductory text, and (f);  
 (180) Section 21.7700 introductory text;  
 (181) Section 21.7720(a)(1)(iii), (b)(1) introductory text, and (b)(3);  
 (182) Section 21.7801;  
 (183) Section 21.7802 (a)(2) and (c);  
 (184) Section 21.7805;  
 (185) Section 21.7807; and  
 (186) Section 7810(b).  
 b. In §§ 21.100, 21.120, 21.130, 21.150, 21.152, 21.155, 21.182, 21.188, 21.190, 21.197, 21.198, 21.212, 21.214, 21.218, 21.220, 21.222, 21.252, 21.256, 21.270, 21.272, 21.294, 21.298, 21.310, 21.312, 21.322, 21.324, 21.332, 21.342, 21.344, 21.350, 21.362, 21.370, 21.374, 21.380, 21.382, 21.390, 21.420, 21.430, 21.1045, 21.3300, 21.3332, 21.3333, 21.4005, 21.4135, 21.4136, 21.4137, 21.4236, 21.4260, 21.4272, 21.4600, 21.5042, 21.5076, 21.5100, 21.5103, 21.5131, 21.5145, 21.5296, 21.5730, 21.5732, 21.5742, 21.5744, 21.5820, 21.5822, 21.5830, 21.5835, 21.5870, 21.6060, 21.6120, 21.6340, 21.6370, 21.7020, 21.7030, 21.7032, 21.7042, 21.7050, 21.7051, 21.7072, 21.7076, 21.7100, 21.7103, 21.7110, 21.7120, 21.7122, 21.7124, 21.7130, 21.7131, 21.7133, 21.7137, 21.7139, 21.7140, 21.7153, 21.7158, 21.7220, 21.7520, 21.7530, 21.7532, 21.7551, 21.7576, 21.7600, 21.7603, 21.7610, 21.7620, 21.7622, 21.7624, 21.7630, 21.7633, 21.7635, 21.7636, 21.7639, 21.7640, 21.7653, 21.7658, 21.7670, 21.7672, 21.7700, and 21.7720 remove the words "The VA" and add, in their place, the words "VA" in the following places:  
 (1) Section 21.100(b);  
 (2) Section 21.120(b) introductory text;  
 (3) Section 21.130(a);  
 (4) Section 21.150(e);  
 (5) Section 21.152(a) introductory text;  
 (6) Section 21.155(a);  
 (7) Section 21.182(b) introductory text and (b)(1);  
 (8) Section 21.188(d)(2);  
 (9) Section 21.190(d) introductory text;  
 (10) Section 21.197(b);  
 (11) Section 21.198 (b), (c)(2), and (d);  
 (12) Section 21.212(d);  
 (13) Section 21.214(b) introductory text, (d)(2), and (f) introductory text;  
 (14) Section 21.218;  
 (15) Section 21.220(a) introductory text, (a)(1), and (b);  
 (16) Section 21.222(a) introductory text and (b)(2);  
 (17) Section 21.252(c);  
 (18) Section 21.256 (a), (b)(3), and (f);  
 (19) Section 21.270(a) introductory text;  
 (20) Section 21.272(b) introductory text, (c)(1), (d)(2), (e), and (i);  
 (21) Section 21.294(b) introductory text, (b)(2), (c), and (g);  
 (22) Section 21.298(d) introductory text;  
 (23) Section 21.310(a)(1);  
 (24) Section 21.312(a);  
 (25) Section 21.322 (a), (c)(1)(i) (A) and (B), (c)(1)(ii) (A) and (B);  
 (26) Section 21.324 (g)(2) (i) and (ii);  
 (27) Section 21.332 (a), (b), (d), (f), and (g);  
 (28) Section 21.342(f);  
 (29) Section 21.344(b) introductory text and (d);  
 (30) Section 21.350(a) introductory text;  
 (31) Section 21.362 (a)(3) and (b) introductory text;  
 (32) Section 21.370 (a), (b) introductory text and (b)(1);  
 (33) Section 21.374 (b) (1) and (2), (c) (1) and (2);  
 (34) Section 21.380(b);  
 (35) Section 21.382(a) introductory text;  
 (36) Section 21.390 (a), (b), and (d);  
 (37) Section 21.420 (a) introductory text and (d);  
 (38) Section 21.430(a);  
 (39) Section 21.1045(h) introductory text;  
 (40) Section 21.3300(c);  
 (41) Section 21.3332 introductory text;  
 (42) Section 21.3333(b)(2) introductory text;  
 (43) Section 21.4005(a)(2);  
 (44) Section 21.4135 (s)(1) and (s)(2) introductory text;  
 (45) Section 21.4136 footnotes (4) and (5) under table in (a);  
 (46) Section 21.4137 footnote 2 under table in (a); (g)(2)(ii), (g)(2)(ii)(A), and (g)(2)(iv);  
 (47) Section 21.4236(d);  
 (48) Section 21.4260(c)(2);  
 (49) Section 21.4272 introductory text, (a) introductory text, and (b) introductory text;  
 (50) Section 21.4600;  
 (51) Section 21.5042(c)(2);  
 (52) Section 21.5076 (a) introductory text and (a)(2);  
 (53) Section 21.5730(b);  
 (54) Section 21.5732(a);  
 (55) Section 21.5100 (c) and (d)(3) introductory text;  
 (56) Section 21.5103 (a)(1), (b) introductory text, (b)(1)(ii), (b)(2), and (c);  
 (57) Section 21.5131 introductory text;  
 (58) Section 21.5145 (b) introductory text, (d)(2), (e), and (i);  
 (59) Section 21.5296(c)(2);  
 (60) Section 21.5742 (a) (1) through (5);  
 (61) Section 21.5744 (a)(2) and (b)(3);  
 (62) Section 21.5820 (b)(2) (i) and (ii) and (c);  
 (63) Section 21.5822(c);  
 (64) Section 21.5830(a);  
 (65) Section 21.5835 (a) (1) and (2), (e), and (g);  
 (66) Section 21.5870 (c)(2) and (d)(1);  
 (67) Section 21.6060 (a) introductory text and (b) introductory text;  
 (68) Section 21.6120(b) introductory text;  
 (69) Section 21.6340(a);  
 (70) Section 21.6370 (a) introductory text, (c) introductory text, and (e);  
 (71) Section 21.7020(b)(25)(ii);  
 (72) Section 21.7030(b);  
 (73) Section 21.7032 (b) and (c);  
 (74) Section 21.7042(d)(2) introductory text;  
 (75) Section 21.7050(c);  
 (76) Section 21.7051 (a) and (a)(2);  
 (77) Section 21.7072(c)(5) introductory text;  
 (78) Section 21.7076 (a) introductory text, (b)(1) introductory text, (b)(2) introductory text, (c) introductory text, and (d) introductory text;  
 (79) Section 21.7100(d);  
 (80) Section 21.7103;  
 (81) Section 21.7110(b) introductory text;  
 (82) Section 21.7120 (b) (1) and (2), and (c);  
 (83) Section 21.7122 (a), (b), (c), and (e) introductory text;  
 (84) Section 21.7124;  
 (85) Section 21.7130;  
 (86) Section 21.7131 (e)(1)(i) (A) and (B), and (e)(1)(ii) (A) and (B);



- (87) Section 21.7133;  
 (88) Section 21.7137 (e) and (f);  
 (89) Section 21.7139 (b) introductory text, (e)(1), (f)(1) introductory text, and (g);  
 (90) Section 21.7140 (a)(1) introductory text, (a)(1) (ii) and (iii), and (d);  
 (91) Section 21.7153 (a) and (c)(1)(ii);  
 (92) Section 21.7158 (a) and (b)(1);  
 (93) Section 21.7220(a)(1)(iii);  
 (94) Section 21.7520(b)(19)(ii);  
 (95) Section 21.7530(b);  
 (96) Section 21.7532 (b) and (c);  
 (97) Section 21.7551 (a) introductory text, (a)(2) and (c) introductory text;  
 (98) Section 21.7576 (a), (b)(1) introductory text, (b)(2) introductory text, (c) introductory text, and (d);  
 (99) Section 21.7600(d);  
 (100) Section 21.7603;  
 (101) Section 21.7610(b) introductory text;  
 (102) Section 21.7620 (b), (c) introductory text, (d)(1) and (d)(2) introductory text;  
 (103) Section 21.7622 (a), (b), (c), and (d);  
 (104) Section 21.7624(a);  
 (105) Section 21.7630;  
 (106) Section 21.7633;  
 (107) Section 21.7635(d)(1) (i) and (ii), (d)(2) (i) and (ii);  
 (108) Section 21.7636(b)(3);  
 (109) Section 21.7639(b) introductory text and (d)(1) introductory text;  
 (110) Section 21.7640(a) introductory text, (c)(1), (d) introductory text, (d)(2) introductory text, (d)(4), (d)(6) introductory text, (e), and (f);  
 (111) Section 21.7653(d)(1)(ii);  
 (112) Section 21.7658(a), (b)(1) introductory text, and (b)(2);  
 (113) Section 21.7670(b)(1) introductory text, (c)(1) introductory text, (d)(1) (ii) and (iii), (d)(2) (i) and (ii), and (e) (1) through (4);  
 (114) Section 21.7672(a) introductory text; and  
 (115) Section 21.7700 introductory text;  
 (116) Section 21.7720(a)(1)(iii)  
 6. In §§ 21.74(c)(3); 21.98 (c) and (d); 21.100(a) introductory text, 21.162(a)(2) and (b) introductory text; 21.258(e); 21.3303(a); 21.4232(d), 21.4250(c)(1); and 21.6050(e) remove the words "Vocational Rehabilitation and Counseling Service" where they appear and add, in their place, the words "Vocational Rehabilitation and Education Service".  
 7. In §§ 21.100(d), 21.222(c)(3), 21.256(d), 21.258(c)(1) and (e), 21.292(e), 21.382(a) introductory text, 21.390(c), 21.430(c)(4), 21.6050(e), remove the acronym "VR&C" and add, in its place, the acronym "VR&E".  
 8. In §§ 21.4001 (a), (b), and (c) introductory text; 21.4005(c) (1) and (2); 21.4153(b), (c)(2)(iii) and (c)(4)(ii), and

(f); 21.4203(b)(1)(i) (A) and (B); 21.4208 (a) and (b); 21.4205(c)(2)(iv)(A) and (B); 21.4250(c)(2); 21.4251(a)(6)(iv)(B), (f)(1), (g) introductory text and (g)(4); 21.4255 (b)(2), 21.4500(d)(2)(ii); 21.4622(a)(1) introductory text; 21.5901(a); 21.7140(b)(2) (i) and (ii); and 21.7301(a) remove the words "Education Service" and add, in their place, the words "Vocational Rehabilitation and Education Service".

9. In §§ 21.272(f); 21.372(a) and (b)(1)(i); 21.4135(i) (1) and (2), (k) (1) and (2); 21.4137(g)(2)(v); 21.4145(f) and (g)(1) introductory text; 21.4146(f); 21.4153(f) introductory text; 21.4201(c)(4)(ii); 21.4202(b)(8)(ii); 21.4203(b)(1)(i) and (b)(1)(i)(B); 21.4205(c)(2)(iv) introductory text, (iv)(B) and (c)(2); 21.4207(a)(2) introductory text and (a)(4), (e)(1), and (e)(2) (i) through (iii); 21.4255(b)(1) introductory text and (b)(2); 21.4500(d)(2)(i) introductory text, (d)(2)(i)(H), (d)(2) (ii) and (iii); 21.4622(a)(2), (b) introductory text, (b)(1)(iv), (b)(2) introductory text, (b)(3) and (c); 21.4624(a) introductory text and (b) introductory text; 21.7135(i)(1) and (2), (j)(1), and (k) (1) and (2); 21.7139(a)(4)(iv); 21.7140(b)(2) introductory text and (b)(2)(ii); and 21.7302(a) introductory text remove the words "station" or "field station" respectively and add, in their place the word "facility".

#### § 21.180 [Amended]

10. In § 21.180(c) remove the phrase "VHS&RA (Veterans Health Services and Research Administration)" and add, in its place, the phrase "Veterans Health Services and Research Administration (VHS&RA)".

#### § 21.4150 [Amended]

11. In § 21.4150(c) remove the word "approvin\$" and add, in its place, the word "approving".

12. In § 21.4301(a) introductory text, (a)(2) introductory text, (a)(2)(iii), concluding paragraph to (a), (b), (c), and (d), 21.4304, and 21.4305, remove the words "Department of Health, Education, and Welfare" wherever they appear and add, in their place, the words "Department of Health and Human Services".

#### § 21.4302 [Amended]

13. In § 21.4302 remove the word "his" in front of the word "designee".

#### § 21.4306 [Amended]

14. In § 21.4306(b) remove the word "his" and add, in its place, the words "his or her".

#### § 21.7137 [Amended]

15. In § 21.7137(a) table, footnote 1, remove the words "\$ 21.713b" and add, in their place, the words "21.7135b".

### PART 26—[AMENDED]

1. The title of part 26 is revised to read as follows:

### PART 26—ENVIRONMENTAL EFFECTS OF THE DEPARTMENT OF VETERANS AFFAIRS (VA) ACTIONS

#### §§ 26.1 and 26.4 [Amended]

2. In § 26.1, § 26.4(b)(3), remove the word "agency" and add, in its place, the word "Department".

#### § 26.21 [Amended]

3. In § 26.2 remove the word "departments" and add, in its place, the word "administrations".

4. In §§ 26.2, 26.4(a) introductory text, § 26.7(c), § 26.5(a)(4), § 26.8 (c), (d) and (e) remove the words "the VA" and add, in their place, the word "VA".

#### §§ 26.4 and 26.5 [Amended]

5. In § 26.4(a) and § 26.5(b) remove the words "The VA" and add, in their place, the word "VA".

6. In § 26.5(a)(3), § 26.7(b)(5), and § 26.9(c), remove the word "Secretary" and add, in its place the words "Secretary of Veterans Affairs".

7. Section 26.3(b) is revised to read as follows:

#### § 26.3 Definitions.

\* \* \* \* \*

(b) *VA elements*, for the purposes of this part, means the Veterans Health Services and Research Administration (VHS&RA), the Veterans Benefits Administration (VBA), the National Cemetery System (NCS), and the Office of Facilities.

\* \* \* \* \*

8. In § 26.6, paragraphs (b)(1) introductory text, (b)(2) introductory text, (b)(3) introductory text, (c)(1) introductory text and (c)(2) introductory text are revised to read as follows:

#### § 26.6 Environmental documents.

\* \* \* \* \*

(b) \* \* \*

(1) Typical classes of action which normally do not require either an Environmental Impact Statement or an Environmental Assessment: \* \* \*

(2) Specific criteria for typical classes of action which normally do not require either an Environmental Impact Statement or an Environmental Assessment: \* \* \*

(3) Extraordinary circumstances that must be considered by a VA element



before categorically excluding a particular Department action: \* \* \*

(c) \* \* \*

(1) Typical classes of action which normally do require Environmental Assessments, but not necessarily Environmental Impact Statements: \* \* \*

(2) Specific criteria for typical classes of action which normally do require an Environmental Assessment: \* \* \*

#### PART 36—[AMENDED]

1. In part 36 remove the citation "38 U.S.C. 1819" or the numbers "1819" wherever they appear, and add the citation "38 U.S.C. 1812" or the numbers "1812" in their respective places.

2. In part 36 remove the citation "38 U.S.C. 1816" or the numbers "1816" wherever they appear, and add the citation "38 U.S.C. 1832" or numbers "1832" in their respective places.

3. In § 36.4202(g), 36.4216(a)(1), 36.4301 in the definition "Lender" and "Manufactured home," 36.4306(g)(5), 36.4311(a)(2) and (b), 36.4331(a), remove the words "the VA" and add, in their place, the word "VA".

#### § 36.4204 [Amended]

4. In § 36.4204(a)(7) remove the phrase "(1) through (6) of this paragraph" and add, in its place, the phrase "(a)(1) through (6) of this section".

#### § 36.4204 [Amended]

5. In § 36.4204(d)(7)(iii)(D) remove the phrase "(7) of this paragraph" and add, in its place, the phrase "(d)(7) of this section".

6. Section 36.4301 is amended as follows:

a. Remove the numbers "1818" in the definition "A period of more than 180 days" and add, in their place, the phrase "1802(a)(2)(C)".

b. Remove the definition "Administrator" and add in alphabetical order the definition "Secretary" to read as follows:

#### § 36.4301 Definitions.

\* \* \*

*Secretary.* The Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs authorized to act in the Secretary's stead.

\* \* \*

c. Remove the phrase "1815(a)" in the paragraph (5)(iii) under the definition "Full disbursement" and add, in its place, the phrase "1803(a)(2)".

d. Remove the numbers "1815" in the definition "Insurance" and add, in their place, the phrase "1803(a)(2)".

#### § 36.4303 [Amended]

7. In § 36.4303(f) remove the word "be" in the first sentence and add, in its place, the word "by".

#### § 36.4323 [Amended]

8. In § 36.4323(f) remove the numbers "1817" and add, in their place, the numbers "1813".

9. In § 36.4323(g) introductory text, remove the phrase "1817(a)" and add, in its place, the numbers "1813".

#### § § 36.4342 and 36.4520 [Amended]

10. In § § 36.4342(c)(1) and 36.4520(c) remove the phrase "1815(b)" and add, in its place the phrase "1803(a)(2)".

#### PART 39—[AMENDED]

1. In § § 39.3 (b)(4), (b)(13) and 39.8(f) introductory text remove the words "the VA" and add, in their place, the word "VA".

#### § 39.3 [Amended]

2. In § 39.3(b)(10) remove the words "Office of Construction" and add, in their place, the words "Office of Facilities".

#### § 39.3 [Amended]

3. In § 39.3(b)(13) remove the word "agency" and add, in its place, the word "Department".

#### § 39.5 [Amended]

4. In § 39.5(c) remove the words "The VA" and add, in their place, the word "VA".

#### § 39.8 [Amended]

5. In § 39.8(a)(3) remove the phrase "VA (Department of Veterans Affairs)" and add, in its place, the phrase "Department of Veterans Affairs (VA)".

#### PART 40—[AMENDED]

1. In § § 40.2(c), 40.4(a), 40.5, 40.7(b), 40.8(b), and 40.9 (c) and (d) remove the word "the VA" and add, in their place, the words "VA".

#### § 40.3 [Amended]

2. In § 40.3 remove the words "the VA's" and add, in their place, the word "VA's".

#### PART 42—[AMENDED]

In § 42.2 remove the definition "Administrator" and add in alphabetical order the definition "Secretary" to read as follows:

#### § 42.2 Definitions.

\* \* \*

*Secretary* means the Secretary of Veterans Affairs.

\* \* \*

[FR Doc. 89-19601 Filed 8-22-89; 8:45 am]

BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 272

[FRL-3632-4]

### Hazardous Waste Management Program Codification of Approved State Hazardous Waste Program for Indiana

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the United States Environmental Protection Agency (EPA) to grant Final Authorization to States to operate their hazardous waste management programs, in lieu of the Federal program. 40 CFR part 272 codifies EPA's prior authorization of State programs and incorporates by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA section 3008. Thus, EPA intends to codify the Indiana authorized States program in part 272.

**DATES:** The codification of Indiana's authorized hazardous waste program shall be effective October 23, 1989 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Indiana's codification must be received by the close of business September 22, 1989. The incorporation of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 23, 1989.

**ADDRESS:** Written comments should be sent to George Woods at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** George Woods, Indiana Regulatory Specialist, Office of RCRA, U.S. EPA Region V, 230 South Dearborn Street, 5HR-JCK-13, Chicago Illinois 60604, (312) 886-6134, (FTS: 8-886-6134).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6926 *et seq.*, allows the U.S. Environmental Protection Agency (EPA) to authorize State hazardous waste programs to



operate in the State in lieu of the Federal hazardous waste program. The purpose of today's Federal Register notice is to codify EPA's approval of Indiana's base hazardous waste management program and two revisions to this program.

On January 31, 1986, EPA published a Federal Register notice announcing its decision to grant final authorization to Indiana (see 51 FR 3953, January 31, 1986). On October 31, 1986 and January 5, 1988, EPA published Federal Register notices announcing its decisions to grant Indiana final authorization for two separate program revisions to its hazardous waste management program (see 51 FR 39752, October 31, 1986 and 53 FR 128, January 5, 1988). The October 31, 1986, Federal Register announced EPA's approval of changes to the name and organization of the lead State agency. Effective April 1, 1986, Indiana Public Law 112-1986 (Act) amended Indiana Public Law 143-1985 (Act) reorganizing the Indiana agency responsible for administering the hazardous waste management program. Prior to April 1, 1986, the Indiana hazardous waste management program was the responsibility of the Indiana State Board of Health (ISBH); the program was implemented by ISBH's Division of Land Pollution Control. On April 1, 1986, Indiana Public Law 143-1985, as amended by Indiana Public Law 112-1986, created a new State agency entitled the Indiana Department of Environmental Management (IDEM). The Division of Land Pollution Control became an office within the IDEM entitled the Office of Solid and Hazardous Waste Management. The organizational structure, the staff composition, and most importantly, the State's regulatory and statutory equivalence to the Federal RCRA program were in no way altered by this statutory reorganization of the RCRA program to the new agency. The final authorization for this program revision became effective on December 31, 1986.

The January 5, 1988, Federal Register announced EPA's approval of Indiana's equivalent rules for the following Federal hazardous waste regulatory amendments:

- (1) Exclusion of Household Waste (49 FR 44980, November 13, 1984);
- (2) Interim Status Standards Applicability (49 FR 46095, November 21, 1984);
- (3) Corrections to the Test Methods Manual (49 FR 47391, December 4, 1984);
- (4) Satellite Accumulation (49 FR 47391, December 20, 1984);
- (5) Redefinition of Solid Waste (50 FR 614, January 4, 1985);

(6) Interim Status Standards for Landfill Cover Design Standards (50 FR 16044, April 23, 1985);

(7) Design Standards (50 FR 16044, April 23, 1985);

(8) Correction to Redefinition of Solid Waste (50 FR 33541, August 20, 1985), and;

(9) Clarification of Spent Pickle Liquor Listing (51 FR 19320, May 28, 1986).

Indiana submitted an application requesting approval of these rule changes on June 29, 1987. That application contained a description of the rule changes, a revised Memorandum of Agreement, an Attorney General's Statement certifying the equivalence of the State rules and a copy of the rules. EPA approved of the rule changes and the State application in the January 5, 1988, Federal Register. The final authorization for this program revision became effective on January 19, 1988.

EPA has decided to codify its approval of State programs in part 272 of title 40, Code of Federal Regulations (CFR) and to incorporate by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. The intended codification reflects the State program that was in effect when EPA granted Indiana final authorization under section 3006(b) for its revised hazardous waste program. This effort will provide clearer notice to the public of the scope of the authorized program in each State. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98-616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By codifying the authorized Indiana program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Indiana, the status of federally approved requirements of the Indiana program will be readily discernible.

The Agency will only codify for enforcement purposes those provisions of the Indiana hazardous waste management program for which authorization approval has been granted by EPA. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his

final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogues.

To codify Indiana's authorized hazardous waste program, EPA will add subpart P to part 272 of Title 40 of the CFR. Subpart P has previously been reserved for Indiana. Sections 272.751(a)(1)-(3), and 272.751(b)-(d) intend to codify for enforcement purposes, the State statutes and regulations, the Memorandum of Agreement, the Attorney General's Statements, the Program Descriptions, and a letter from the State Health Commissioner which are authorized and made part of the hazardous waste management program under Subtitle C of RCRA.

The Agency retains the authority under Sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedures Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to codify for purposes of enforcement such particular, authorized Indiana enforcement authorities. Section 272.751(a)(2) lists those authorized Indiana authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)). As a result, State provisions which are "broader in scope" than the Federal program are not codified for purposes of enforcement in part 272. Section 272.751(a)(3) of the intended codification simply lists for reference and clarity the Indiana statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being codified. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

As noted above, the Agency is not amending part 272 to include HSWA requirements and prohibitions that are immediately effective in Indiana and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in



authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (See 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and codified State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the part 272 codification every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's Part 272 codification. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The codification of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

#### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to codify the decision already made to authorize Indiana's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

#### Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies

must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

#### List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 20, 1989.

Frank M. Covington,  
*Acting Regional Administrator.*

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

#### PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart P of part 272 is amended by adding §§ 272.750 and 272.751 and by reserving §§ 272.752 through 272.799 to read as follows:

##### Subpart P—Indiana

272.750 State authorization  
272.751 State-administered program: Final authorization  
272.752–272.799 [Reserved]

##### § 272.750 State authorization.

(a) The State of Indiana is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6921 *et seq.*, subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA), (Pub. L. 98-616, Nov. 8, 1984), 42 U.S.C. 6928(c) and (g). The Federal program for which a State may receive authorization is defined in 40 CFR part 271. The State's base program and revisions to that program, as administered initially by the Indiana State Board of Health and later by the Indiana Department of Environmental Management, were approved by EPA pursuant to 42 U.S.C. 6926(b) and part 271 of this chapter. EPA's approval of Indiana's base program was effective on January 31, 1986. EPA's approval of

revisions to Indiana's base program were effective on December 31, 1986, and January 19, 1988.

(b) Indiana is not authorized to implement any HSWA requirements in lieu of EPA unless EPA has explicitly indicated its intent to allow such action in a Federal Register notice granting Indiana authorization.

(c) Indiana has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities under sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, and 6973, as well as under other Federal laws and regulations.

(d) Indiana must revise its approved program to adopt new changes to the Federal subtitle C program in accordance with section 3006(b) of RCRA and 40 CFR part 271, subpart A. Indiana must seek final authorization for all program revisions pursuant to section 3006(b) of RCRA but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to section 3006(g) of RCRA, 42 U.S.C. 6926(g). If Indiana obtains final authorization for the revised requirements pursuant to section 3006(b), the newly authorized provisions will be listed in § 272.751 of this subpart. If Indiana obtains interim authorization for the revised requirements pursuant to section 3006(g), the newly authorized provisions will be listed in § 272.752.

##### § 272.751 State-administered program: Final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Indiana has final authorization for the following elements submitted to EPA in Indiana's base program and base program revision applications for final authorization and approved by EPA effective on January 31, 1986, December 31, 1986, and January 19, 1988.

(a) *State Regulations.* (1) The following Indiana regulations are incorporated by reference and codified as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*: Indiana Administrative Code, title 320, articles 4.1-1-3 through 4.1-37-4, 4.1-37-6 through 4.1-39-12, and 4.1-40-1 through 4.1-54-8 (1987 Cumulative Supplement, Volume 2, as supplemented by Indiana Register, Volume 10, Number 8, pages 1563-1690, May 1, 1987). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Copies of the Indiana regulations that are incorporated by reference in this paragraph are available for the



Indiana Legislative Services Agency, Administrative Code and Register Division, 302 State House, Indianapolis, Indiana 46204.

(2) The following statutes and regulations concerning State enforcement, although not codified herein, are part of the authorized State program:

(i) Indiana Code, title 4, article 21.5, chapters 1 through 4; title 13, article 6, chapter 1, section 6; and title 13, article 7, chapters 1 through 7, 8.5, 10 through 13 (except for chapter 13, Section 2(a)), and 16 (effective July 1, 1987).

(ii) Indiana Administrative Code, title 320, articles 4.1-1-1, 4.1-1-2, 4.1-37-5, and 4.1-39-13 through 4.1-39-21 (1987 Cumulative Supplement, Volume 2, as supplemented by Indiana Register, Volume 10, Number 8, pages 1563-1690, May 1, 1987).

(3) The following statutory provisions of the Indiana Code are broader in scope than the Federal program, are not part of the authorized program, and are not codified herein for enforcement purposes: Indiana Code, title 13, article 7, chapter 8.7 and chapter 13, section 2(a) (effective July 1, 1987).

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region V and the Indiana Department of Environmental Management, signed by the EPA Regional Administrator on July 18, 1986, is codified as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(c) *Statements of Legal Authority.* The Indiana Attorney General's Statements for final authorization signed by the Attorney General of Indiana on June 28, 1985, August 26, 1986, and June 1, 1987, are codified as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(d) *Program Description.* Program Descriptions dated August 5, 1985, April 24, 1986, and June 29, 1987, and any other materials submitted as part of, or as supplements to, the original application or revision applications are codified as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(e) *Letter from State Health Commissioner.* The letter from the State Health Commissioner, Indiana Board of Health to the Regional Administrator, EPA Region V dated November 4, 1985, as an addendum to the Indiana Final Authorization Application, is codified as part of the authorized hazardous waste

management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

[FR Doc. 89-19639 Filed 8-22-89; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 300

[FRL-3634-1]

#### National Priorities List for Uncontrolled Hazardous Waste Sites—Final Update #5; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** EPA is correcting an error in the final rule #5 updating the National Priorities List which appeared in the *Federal Register* on March 31, 1989 (54 FR 13296).

**FOR FURTHER INFORMATION CONTACT:** Robert Myers at (202) 475-9702.

**SUPPLEMENTARY INFORMATION:** EPA has promulgated revisions to the National Priorities List on March 31, 1989 (54 FR 13296). The preamble to this final rule contained an error which is identified below and corrected by this notice.

Dated: August 16, 1989.

Elizabeth LaPointe,

Acting, Director, Resource Management Staff,  
Office of Solid Waste and Emergency Response.

The following correction is made in FRL 3546-3, the National Priorities List for Uncontrolled Hazardous Waste Sites—Final Update #5; Final Rule published in the *Federal Register* on March 31, 1989 (54 FR 13296):

#### PART 300—[CORRECTED]

On page 13305, in the third column, under PART 300—[AMENDED], item 2, "Appendix B of Part 300 is revised to read as set forth below" should read "Appendix B of Part 300 is amended to revise only the National Priorities List by rank, as set forth below. The National Priorities List, Federal Section (By Group) remains the same".

[FR Doc. 89-19852 Filed 8-22-89; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 799

[OPTS-42059E; FRL 3634-6]

#### Testing Consent Order for 1,1,1-Trichloroethane and Response to the Interagency Testing Committee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule announces that EPA has signed an enforceable testing consent order with five manufacturers of 1,1,1-trichloroethane (TCEA) (CAS No. 71-55-6), who have agreed to perform mutagenicity and neurotoxicity tests with TCEA. TCEA is added to the list of Testing Consent Orders in 40 CFR 799.5000 for which the export notification requirements of 40 CFR part 707 apply. This rule constitutes an additional EPA response to the Interagency Testing Committee's (ITC) recommendation that EPA consider health effects testing of TCEA. In October 1984, EPA issued a final Phase I test rule requiring that manufacturers perform a developmental toxicity test with TCEA.

**EFFECTIVE DATE:** August 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404. TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Under procedures described in 40 CFR part 790, The Dow Chemical Company, ICI Americas, Inc., Vulcan Chemicals, Occidental Chemical Corp., and PPG Industries, Inc., (the Companies) have entered into a Testing Consent Order with EPA in which these companies have agreed to perform mutagenicity and neurotoxicity testing of TCEA. This rule amends subpart C of 40 CFR part 799 to add TCEA to the list of chemical substances and mixtures subject to testing consent orders.

#### I. ITC Recommendation

In its Second Report to EPA, published in the *Federal Register* of April 19, 1978 (43 FR 16684), the ITC recommended that TCEA be considered for health effects testing.

In the *Federal Register* of October 10, 1984 (49 FR 39810), EPA issued a final phase I rule requiring manufacturers and processors of TCEA to perform a developmental toxicity test. The Agency deferred inclusion of mutagenicity and neurotoxicity testing because the tiered testing scheme for mutagenicity testing and the neurotoxicity test guidelines had not been sufficiently developed. Both the test scheme and guidelines are now available, the EPA is, therefore, requiring that this testing be performed.

#### II. Testing Consent Order Negotiations

In the *Federal Register* of August 20, 1987 (52 FR 31445), and in accordance with the procedures established in 40 CFR 790.28, EPA requested persons



interested in participating in or monitoring testing negotiations on TCEA to contact the Agency. EPA held public meetings with interested parties on September 10 and October 29, 1987; August 4 and November 28 through 29, 1988; and February 3, 1989, to discuss the testing appropriate for TCEA. In July and August 1989, five TCEA manufacturers and EPA signed a Testing Consent Order for TCEA. Under the Order, the manufacturers agreed to conduct or provide for the conduct of an in vivo mammalian cytogenetics micronucleus assay, a rodent dominant lethal test (if triggered), and six neurotoxicity tests: Functional observational battery (acute and subchronic), sensory evoked potential battery (acute and subchronic), neuropathology, and a developmental neurotoxicity screen. The specific test standards to be followed and the testing schedule for each test were included in the Order. Procedures for submitting study plans, modifying the Order, monitoring the testing and other provisions were also included in the Order.

### III. Use and Exposure

The final phase I test rule on TCEA issued on October 10, 1984, was issued under section 4(a)(1)(B) of TSCA. In that rule, EPA found that TCEA was produced in substantial quantities and there was substantial occupational and consumer exposure to TCEA resulting from its manufacture, processing, and use. The bases for the findings were presented in the final rule and the support document for the rule (Ref. 1). Additional information is now available which further documents the extent of consumer and general population exposure to TCEA (Refs. 2 through 4).

It is also worth noting that TCEA, because of its contribution to chlorine in the stratosphere, is under review for possible inclusion in future revisions to the Montreal Protocol on Substances That Deplete the Ozone Layer (April 17, 1989; 54 FR 15228). Although it is not now clear what controls the Parties to the Protocol will agree to, TCEA will continue to be used to some extent in the near future. In addition, due to the physical and chemical properties of TCEA and its predominant use as an expendable solvent, even a major reduction in production volume would still result in substantial human exposure. Residual amounts of TCEA will remain in the environment contributing to human exposure and supporting the need for these data. Therefore, the tests specified in this consent order remain essential.

### IV. Testing Program

#### A. Mutagenicity

The mutagenicity potential of TCEA and the limitations of the available studies have been adequately reviewed in EPA's "Health Assessment Document for 1,1,1-Trichloroethane (Methyl Chloroform)" (Ref. 5) and in EPA's support document for the phase I test rule for TCEA (Ref. 1). In brief, TCEA is mutagenic in *Salmonella typhimurium* strains TA 1535, TA 1537, and TA 100 both with and without metabolic activation (Refs. 6 and 7). In addition, in the *Drosophila* sex-linked recessive lethal study sponsored by EPA, TCEA was reported to induce recessive lethal mutations in spermatocytes when administered by feeding (Ref. 8). However, although there is some indication that TCEA may induce lethal mutations in this *Drosophila* study, the data indicate at most a weak response and are insufficient in themselves to warrant proposing that the mouse visible specific locus test be required at this time (Ref. 9).

Concerning chromosomal effects, three in vivo cytogenetics tests have been conducted with TCEA (Refs. 10 through 12). These tests, however, were not conducted well enough to evaluate the potential of TCEA to cause chromosomal effects. In the studies by Gocke et al. (Ref. 10) and Tsuchimoto and Matter (Ref. 11), the bone marrow was harvested too soon (only 6 hours) after the last dose. In the study by Salamone (Ref. 12), only male mice were tested. A dominant lethal test has also been conducted with TCEA as part of a two-generation fertility study in mice (Ref. 13). Statistically significant differences were reported in the ratio of dead to live fetuses; however, both increases and decreases were observed. This screening level study was judged to be inadequate because animals were not given doses high enough to produce overt signs of toxicity and because there is uncertainty over the dose the animals actually received (Ref. 5). In addition, the purity of the TCEA (95 percent TCEA, 3 percent dioxane) and route of administration (oral) are not comparable to the test substance and route specified in this Order. Other mutagenicity studies that have been identified and reviewed by EPA (Refs. 1 and 5) have been judged inadequate because conventional protocols were used that did not adjust test conditions and procedures to accommodate TCEA's high volatility and low water solubility; controls were not included in the experimental design; and/or too few animals were used in the study to provide adequate data.

The available studies are inadequate to fully characterize and evaluate the potential of TCEA to cause chromosomal effects.

Under the Consent Order, the Companies have agreed to a tiered testing program. The first tier test is a micronucleus test to be conducted according to an HSA protocol. EPA has accepted this alternative methodology because it believes the test will provide reliable and adequate data equal to that which would be obtained from testing according to the TSCA guideline. The second tier test is the dominant lethal test which shall be conducted according to the TSCA guideline. The tests agreed upon are presented in IV.B. below.

#### B. Neurotoxicity

TCEA has been shown to produce non-specific central nervous system (CNS) depression in humans after exposure to doses ranging from 500 through 2,650 ppm (Refs. 14 through 17). Only one of these studies (Ref. 16) had an exposure duration of more than 1 day. In this study, CNS depression was observed after exposure to 500 ppm for 7 hours/day for 5 days. The other three studies utilized short-term exposures which varied from a few minutes to several hours. None of the studies were adequate to characterize either short- or long-term neurologic effects of exposure to TCEA. Of particular note, CNS effects were noted for the 5-day exposure to 500 ppm TCEA (Ref. 16) but not for the 78-minute exposure (Ref. 15) to this concentration, suggesting that exposure longer than 5 days may cause CNS effects at even lower concentrations. In addition, 350 to 550 ppm TCEA have been shown to impair perceptual speed, manual dexterity and reaction time (Refs. 18 and 19).

A number of neuropathological and behavioral disorders are associated with chronic exposure to organic solvents such as TCEA. The effects noted in workers exposed to solvents include: decreased concentration ability, memory, learning ability, impulse control, and motivation; emotional instability; and impaired peripheral nerve function (Refs. 20 and 21). These disorders (referred to as solvent syndrome) can persist for years after cessation of exposure and may be irreversible. In addition, EPA has been informed of neurological problems (CNS depression, reoccurring loss of motor activity, and loss of memory) in workers exposed to TCEA (Refs. 22 and 23). Although these reports are anecdotal, they further support EPA's concern for the effects of TCEA on the nervous system.



Available animal studies of TCEA's effects on the nervous system and behavior are summarized in reference 5. Effects reported were on motor activity, vestibular control, and fixed-interval response rate. However, the endpoints measured in these studies were evaluated in only a preliminary manner and no-effect levels were not determined. Although these studies further support concern for the neurotoxicity potential of TCEA, they are inadequate to fully characterize the

acute and chronic neurotoxic potential of TCEA, especially behavioral and developmental neurotoxicity effects. No adequate studies on the potential of TCEA to cause neurophysiological, neuropathological, or neurobehavioral effects were identified.

In the Consent Order, the Companies agreed to conduct six neurotoxicity tests with TCEA, and systems development and positive control verification of the developmental neurotoxicity test. These six tests will be conducted according to

protocols submitted by HSIA, and approved by EPA. EPA has agreed to testing by these protocols because it believes that they will provide equally reliable and adequate data to evaluate the neurotoxic effects of TCEA. Some of these tests may provide better data than the current TSCA guidelines but EPA cannot determine this until the data have been thoroughly evaluated. The tests agreed upon are presented in the following table.

TABLE—TESTING PLAN FOR TCEA

|  | Test methods                        | Report date <sup>1</sup> |
|--|-------------------------------------|--------------------------|
| Tier 1 tests:  |                                     |                          |
| Functional observational battery, acute and subchronic.....                                    | HSIA Protocol <sup>2, 3</sup> ..... | 21                       |
| Sensory evoked potential battery, acute and subchronic.....                                    | HSIA Protocol <sup>2, 3</sup> ..... | 21                       |
| Neuropathology, subchronic.....  | HSIA Protocol <sup>3</sup> .....    | 21                       |
| Systems development and positive control verification of developmental neurotoxicity test..... | See Appendix 3.....                 | * 18                     |
| Developmental neurotoxicity test.....  | HSIA Protocol <sup>4</sup> .....    | 36                       |
| Micronucleus test.....   | HSIA Protocol <sup>4</sup> .....    | 14                       |
| Tier 2 test: Dominant lethal <sup>7</sup>  | 40 CFR 798.5450.....                | 24                       |

<sup>1</sup> Number of months after the effective date of the Consent Order when the final test results must be submitted to EPA.

<sup>2</sup> Halogenated Solvents Industry Alliance (HSIA) Protocol entitled "Acute Motor Activity and Neurophysiologic Effects of 1,1,1-Trichloroethane in Rats", Appendix 1 to the Consent Order.

<sup>3</sup> HSIA Protocol entitled "Neurotoxicologic Examination of Rats Exposed to 1,1,1-Trichloroethane Vapor for 13 weeks", Appendix 2 to the Consent Order.

<sup>4</sup> An unaudited draft report will be submitted for review at this time. A final report will be prepared concurrently with the developmental neurotoxicity test of TCEA.

<sup>5</sup> HSIA Protocol entitled "Examination of Rats for Developmental Neurotoxicologic Effects from Maternal Exposure to 1,1,1-Trichloroethane", Appendix 4 to the Consent Order.

<sup>6</sup> HSIA Protocol entitled "An Inhalation Mouse Bone Marrow Micronucleus Test on 1,1,1-Trichloroethane", Appendix 5 to the Consent Order.

<sup>7</sup> This test must be conducted only if EPA notifies the Companies.

In this consent agreement, EPA has approved the use of test protocols specifically developed to evaluate the mutagenic and neurotoxic potential of TCEA. The data generated by these tests will be used to determine the risk of mutagenic and neurotoxic effects associated with the manufacture, processing, use, and disposal of TCEA. Until the results of the testing required by this consent order have been fully evaluated by EPA, EPA will probably not consider using these methods for neurotoxicity and mutagenicity testing in any other consent order under TSCA section 4.

## V. Export Notification

In addition to the Phase I test rule, the issuance of the Consent Order subjects any person who exports or intends to export TCEA to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR part 707. In the June 30, 1986 (51 FR 23706), Interim Rule establishing the Testing Consent Order process, EPA added and reserved subpart C of part 799 for listing of testing consent orders issued by EPA. This listing serves as notification to persons, who export or intend to export chemical substances or mixtures which are the subject of testing

consent orders, that 40 CFR part 707 applies.

## VI. Rulemaking Record

EPA has established a record for this rule and the Consent Order (docket number OPTS-42059E). This record contains the basic information considered by EPA in developing this rule and the Testing Consent Order. This record includes the following information:

### A. Supporting Documentation

(1) Testing Consent Order between five TCEA manufacturers and the EPA.

(2) Federal Register notices pertaining to this rule and consent order consisting of:

(a) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(b) Notice of interim final rule on procedures governing Testing Consent Agreements and Test Rules and Exemption Procedures (51 FR 23706; June 30, 1986).

(c) Toxic Substances Control Act Test Guidelines; Final Rules (50 FR 39252; September 27, 1985).

(d) Notice of final rule revising the Toxic Substances Control Act Test Guidelines (52 FR 19056; May 20, 1987).

(e) Notice containing the ITC recommendation of TCEA to the Priority List (43 FR 16684; April 19, 1978).

(f) Notice of proposed test rule for 1,1,1-trichloroethane (46 FR 30300; June 5, 1981).

(g) Notice of final Phase I test rule for 1,1,1-trichloroethane (49 FR 39810; October 10, 1984).

(h) Notice of final Phase II test rule for 1,1,1-trichloroethane (50 FR 51683; December 19, 1985).

(i) Notice of proposed test rule for triethylene glycol monomethyl, monoethyl, and monobutyl ethers (51 FR 17833; May 15, 1986).

(j) Notice soliciting interested parties for developing a consent order for 1,1,1-trichloroethane (52 FR 31445; August 20, 1987).

### B. References

(1) USEPA. U.S. Environmental Protection Agency. Assessment of Testing Needs: 1,1,1-Trichloroethane. Office of Pesticides and Toxic Substances. USEPA, Washington, DC. (May 1981).

(2) USEPA. Household Products Containing Methylene Chloride and Other Chlorinated Solvents: "A Shelf Survey." Office of Toxic Substances, USEPA, Washington, DC. (July 1987). (EPA 560/5-87-006).

(3) USEPA. Household Solvent Products: A National Usage Survey. Office of Toxic Substances, USEPA, Washington, DC. (July 1987). (EPA 560/5-87-005).

(4) Versar Inc., Springfield, VA. Physical-Chemical Properties, Environmental Fate and Mobility, and Monitoring Data for Six Halogenated Solvents. Prepared for the



Office of Toxic Substances, USEPA, Washington, DC. (July 1987).

(5) USEPA. Health Assessment Document for 1,1,1-Trichloroethane (Methyl Chloroform). Office of Health and Environmental Assessment. USEPA. Washington, DC (February 1984).

(6) Margard, W. "Summary report on in vitro bioassay of chlorinated hydrocarbon solvents to Detrex Chemical Industries, Inc." Battelle Columbus Laboratories, Inc. Columbus, OH. (July 31, 1978).

(7) Simmon, V. F., Kauhanen, K., and Tardiff, R. G. "Mutagenic activity of chemicals identified in drinking water." *Developmental Toxicology and Environmental Science*. 2:249-258. (1977).

(8) USEPA. "Drosophila sex-linked recessive lethal assay of 1,1,1-trichloroethane." Genetic Bioassay Branch, Health Effects Research Laboratory, USEPA. Research Triangle Park, NC. (April 26, 1985).

(9) USEPA. "1,1,1-Trichloroethane (TCEA): Review of Drosophila Sex-linked Recessive Lethal Assay." Intra-agency memorandum from Micheal Cimino, Toxic Effects Branch to Frank Benenati, Test Rules Development Branch, Office of Toxic Substances, Washington, DC 20460. (June 30, 1987).

(10) Gocke, E., King, M. T., Eckhardt, K., and Wild, D. "Mutagenicity of cosmetics ingredients licensed by European Communities." *Mutation Research*. 90:91-109. (1981).

(11) Tsuchimoto, T. and Matter, B. E. "Activity of coded compounds in the micronucleus test." In: "Evaluation of short term tests for carcinogens. Report of the international collaborative study." *Progress in Mutation Research*. Volume 1. de Serres, F. and Ashby, J., eds. Amsterdam: Elsevier, pp. 705-11. (1981).

(12) Salamone, M. F., Heddle, J. A., and Katz, M. "Mutagenic activity of 41 compounds in the in vivo micronucleus assay." In: "Evaluation of short term tests for carcinogens. Report of the international collaborative study." *Progress in Mutation Research*. Volume 1. de Serres, F. and Ashby, J., eds. Amsterdam: Elsevier, pp. 686-97. (1981).

(13) Lane, R. W., Riddle, B. L., and Borzelleca, J. F. "Effects of 1,2-dichloroethane and 1,1,1-trichloroethane in drinking water on reproduction and development in mice." *Toxicology and Applied Pharmacology* 63:409-21. (1982).

(14) Torkelson, T. R., Oyen, F., McCollister, D., and Rowe, V. K. "Toxicity of 1,1,1-trichloroethane as determined on laboratory animals and human subjects." *American Industrial Hygiene Association Journal*. 19:353-362. (1958).

(15) Stewart, R. D., Gay, H. H., Erley, D. S., Hake, C. L., and Schaffer, A. W. "Human exposure to 1,1,1-trichloroethane vapor: Relationship of expired air and blood concentrations to exposure and toxicity." *American Industrial Hygiene Association Journal*. 22:252-262. (1961).

(16) Stewart, R. D., Gay, H. H., Schaffer, A. W., Erley, D. S., and Rowe, V. K. "Experimental human exposure to methyl chloroform vapor." *Archives of Environmental Health*. 19:467-472. (1969).

(17) Dornette, W. H. L. and Jones, J. P. "Clinical experiences with 1,1,1-trichloroethane. A preliminary report of 50 anesthetic administrations." *Anesthesia and Analgesia*. 39:249-253. (1960).

(18) Salvini, M., Binasci, S., and Riva, M. "Evaluation of the psychophysiological functions in humans exposed to the 'Threshold Limit Value' of 1,1,1-trichloroethane." *British Journal of Industrial Medicine*. 28:286-292. (1971).

(19) Gamberale, F. and Hultengren, M. "Methylchloroform exposure II. Psychophysiological functions." *Work Environmental Health*. 10:82-92. (1973).

(20) National Institute for Occupational Safety and Health. "Organic Solvent Neurotoxicity." Current Intelligence Bulletin 48. Department of Health and Human Services, NIOSH Publication No. 87-104. (March 31, 1987).

(21) World Health Organization/Nordic Council of Ministers Working Group. "Chronic effects of organic solvents on the central nervous system and diagnostic criteria." Copenhagen, Denmark. (June 10-14, 1985).

(22) USEPA. Memorandum to the file on neurotoxicity from exposure to TCEA on naval vessels. Frank Benenati, Test Rules Development Branch, Office of Toxic Substances, USEPA, Washington, DC. (October 8, 1987).

(23) USEPA. Telephone conversation between H. Sacarello, Science Management Corp., and Frank Benenati, Test Rules Development Branch, Office of Toxic Substances, USEPA, Washington, DC. (October 7, 1987).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OTS Public Information Office, Room NE-G004, 401 M Street, SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

## VII. Other Regulatory Requirements

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0033.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070-0033), Washington, DC 20503.

### List of Subjects in 40 CFR Part 799

Chemical export, Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Testing procedures.

Dated: August 7, 1989.

Charles L. Elkins,  
Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

### PART 799—[AMENDED]

The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding the following chemical substance in Chemical Abstract Service (CAS) Registry Number order to the table, to read as follows:

§ 799.5000 Testing consent orders.

\* \* \* \* \*



| CAS number | Substance or mixture name | Testing        | Federal Register citation |
|------------|---------------------------|----------------|---------------------------|
| 71-55-6    | 1,1,1-Trichloroethane     | Health effects | August 23, 1989.          |

[FR Doc. 89-19818 Filed 8-22-89 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 2

[General Docket 87-14; FCC 89-206]

#### Allocation of the 216-225 MHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petitions for reconsideration.

**SUMMARY:** This action affirms the Commission's August 4, 1988, Report and Order (53 FR 36287, Sept. 19, 1988), which amended the Commission's Rules, § 2.106 (Table of Frequency Allocations), by reallocating the 220-225 MHz band. In the Report and Order the 220-222 MHz band was allocated to the land mobile service for government and nongovernment use and the 222-225 MHz band was allocated to the amateur service. This action responds to petitions for reconsideration filed by amateur licenses, amateur groups and the National Communications System which requested the Commission to allocate the entire 220-225 MHz band to the amateur service. It also responds to a petition for reconsideration filed by TV Answer, Inc. which requested a fixed allocation of one-half megahertz for a viewer-response service in the 220-222 MHz band.

**EFFECTIVE DATE:** August 23, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Fred Thomas, telephone (202) 653-8112.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order in General Docket 87-14, FCC 89-206, Adopted June 15, 1989, and Released August 17, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service,

(202) 857-3900, 2100 M Street NW., Suite 140, Washington, DC 20037.

#### Summary of Final Rule

1. By this action the Commission responds to petitions for reconsideration by affirming its decision to: (1) Maintain the existing 216-220 MHz band allocation; (2) allocate the 220-222 MHz band to the land mobile service for both government and nongovernment operations; and, (3) allocate the 222-225 MHz band to the amateur service.

2. The Commission is unpersuaded by the petitions for reconsiderations to make any change to the decision of the Report and Order. It believes that all of the relevant issues were adequately addressed in the

#### Report and Order

3. In taking this action, the Commission considered a variety of factors, including the need to provide for narrowband land mobile operations, actions of the 1979 World Administrative Radio Conference (1979 WARC), potential interference to TV broadcasting, the impact on the amateur use of the 220-225 MHz band and other factors. The Commission concludes that the above allocations are in the public interest. In making this determination the Commission is particularly sensitive to the concerns expressed by amateur community in this proceeding. The Commission states that it will continue to support the spectrum needs of the amateur service. It believes that this service is important to promote the development of individuals schooled in the radio art, to advance radio technology and to provide public service, particularly in times of emergencies.

4. Government and non-government users will not be allowed access to the 220-222 MHz band until final service rules have been adopted by the Commission. Amateur stations may continue to use the 220-220 MHz band until that time. Amateur operators are cautioned, however, to refrain from making any investments in equipment that would be only suitable for operation in this band. Amateur stations should begin an orderly transition of on-going operations in the 220-222 MHz band to other amateur service frequency bands so that an abrupt termination of such activities will not be necessary. Additionally, the amateur community

may wish to address any changes to the amateur service rules that it finds desirable in preparation of the removal of the 220-222 MHz band, yet are beyond the scope of this proceeding. For example, the lifting of the prohibition on auxiliary link operation on some or all of the longer wavelength bands and secondary amateur fixed use of a portion of the 216-220 MHz band are two matters the community may wish to consider and petition for amendment. However, with regard to amateur secondary fixed use of the 216-220 MHz band the Commission notes that such a proposal would need to provide support for why an allocation is needed and show how amateur operations could use this band without causing interference to existing users of the 216-220 MHz band and also to adjacent TV channel 13 operations in the 210-216 MHz band.

5. One other petition was received from TV Answer (TVA). It requested the Commission to reconsider its decision to the extent that the reallocation precludes the grant of TVA's Petition for Rule Making, RM-6196, which seeks a fixed allocation of one-half megahertz in the 216-222 MHz band for a television viewer-response radio service. TVA's Petition for Rule Making is being denied with regard to the 220-222 MHz band in this Memorandum Opinion and Order. TVA's request for use of the spectrum below 220 MHz for a viewer-response service will be considered in a separate item.

6. The Commission also denies a "Request For Oral Arguments" filed by the American Radio Relay League (ARRL). The Commission notes that it is not its policy to grant routinely oral arguments in rulemaking proceedings, particularly in proceedings that have a full written record as in the case of this proceeding. Further, the Commission states that oral *ex parte* presentations may be made to the Commissioners during the course of rulemaking proceeding. In this proceeding a number of such oral *ex parte* presentations were made to each of the Commissioners, including several presentations by the ARRL.

#### Ordering Clauses

7. Accordingly, it is ordered, That the petitions for reconsideration filed in this proceeding are denied.



8. *It is further ordered*, That TV Answer's Petition for Rule Making, RM-6196, is Denied with regard to an allocation of 0.5 MHz in the 220-222 MHz band.

9. *It is further ordered*, That this proceeding is terminated.

#### List of Subjects in 47 CFR Part 2

Frequency allocations and radio treaty matters, General rules and regulations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-19800 Filed 8-22-89; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 97

[PR Docket No. 88-467; FCC 89-266]

#### Amateur Radio Services; Use of the 17 Meter Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** Petitioner Dennis Murphy requested reconsideration of the Commission's refusal to allow Novice and Technician Class operators access to the 17 meter band. The Commission affirmed its refusal holding that Novice and Technician Class operators should be excluded because they had recently received enhanced privileges and because of the small size of the band. The refusal minimizes the possibility of interference in that band because Novices and Technicians are not as skillful as higher grade operators.

**EFFECTIVE DATE:** August 23, 1989.

**ADDRESS:** Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

**FOR INFORMATION CONTACT:** Maurice J. DePont, Federal Communications Commission, Washington, DC 20554 (202) 632-4964.

#### SUPPLEMENTARY INFORMATION:

#### List of Subjects in 47 CFR Part 97

Amateur radio, Frequencies, Radio.

#### Memorandum Opinion and Order

Adopted: August 4, 1989. Released: August 15, 1989.

By the Commission:

#### I. Introduction

1. On January 31, 1989, we released a Report and Order<sup>1</sup> that authorized access to the 17 meter band<sup>2</sup> to all General, Advanced and Amateur Extra Class operator licensees. Dennis Murphy has requested reconsideration of the Commission's refusal also to allow access to the 17 meter band by Novice and Technician Class operators.

#### II. Background

2. The 17 meter band is one of three new high frequency (HF) bands allocated to the amateur service by the 1979 World Administrative Radio Conference.<sup>3</sup> The allocation for the 17 meter band generally followed the pattern of the amateur service rules for the seven other HF bands, with operating privileges based on the class of operator license, separation of analog and digital emission types, and maximum transmitter power.

#### III. Petition For Reconsideration

3. The petitioner asks that the 18.068-18.110 MHz segment of the 17 meter band, where telegraphy (A1A) and digital (F1B) emission types are permitted for stations with higher grade control operators, also be authorized with a 200 watt power limit for amateur stations whose control operators hold either a Novice or Technician Class operator license. Mr. Murphy states that there should be equal access to the 17 meter band by all amateur operator classes in order to enhance amateur station participation in the use of the 17 meter band. The American Radio Relay League, Inc., filed an opposition to the petition for reconsideration noting that the Commission had thoroughly considered the matter of access to the band by license class.

#### IV. Decision

4. The petitioner has not presented any facts or arguments that have not previously been considered. In fact, we discussed at length in our Report and Order the operator license classes that should be allowed access to the new 17 meter band, and concluded, *inter alia*, that Novice and Technician Class operators should be excluded from the 17 meter band in view of the enhanced privileges that they had recently

<sup>1</sup> Report and Order, 4 FCC Rcd 1424 (1989) (54 FR 5933, Feb. 7, 1989).

<sup>2</sup> The frequencies between 18.068 MHz and 18.168 MHz are commonly referred to in the amateur community as the 17 meter band.

<sup>3</sup> See Final Acts of the World Administrative Radio Conference (Geneva 1979).

received and because of the band's small size. In addition, we reiterate our belief that the potential for interference in the 17 meter band will be minimized if the skills associated with the General Class or higher operator license are required.<sup>4</sup>

#### V. Ordering Clauses

5. Accordingly, *it is ordered*, Pursuant to the authority contained in section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that the petition for reconsideration is denied.

6. *It is further ordered*, That this proceeding is terminated.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-19801 Filed 8-22-89; 8:45 am]

BILLING CODE 6712-01-M

#### DEPARTMENT OF DEFENSE

48 CFR Parts 207, 209, 215, 219, 225, 226, and 252

[Defense Acquisition Circular (DAC) 88-11]

#### Department of Defense Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a final rule (Defense Acquisition Circular 88-11) which was published in the Federal Register on Wednesday, July 26, 1989, 54 FR 31035. This action is necessary to correct a reference in Introductory Item I.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, telephone (202) 697-7266.

Charles W. Lloyd,

Executive Secretary Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting Defense Acquisition Circular 88-11 as follows:

On page 31037, Item I is corrected by changing in the introductory paragraph and in paragraph a. of the certificate under Appendix B the reference "DAC 86-9" to read "DAC 88-11" in both places.

[FR Doc. 89-19778 Filed 8-22-89; 8:45 am]

BILLING CODE 3810-01-M

<sup>4</sup> Report and Order, *supra*, at paragraphs 6 and 9.



# Proposed Rules

Federal Register

Vol. 54, No. 162

Wednesday, August 23, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### 1 CFR Part 305

#### Agency Administration of Failed or Failing Depository Institutions

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Request for public comments

**SUMMARY:** The Administrative Conference's Special Committee on Financial Services has under consideration a draft recommendation on agency administration of failed or failing depository institutions. Interested persons are invited to comment on the draft recommendation.

**DATES:** Please submit comments by September 22, 1989.

**ADDRESSES:** Send comments to Brian C. Murphy, office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Brian C. Murphy (202) 254-7065.

**SUPPLEMENTARY INFORMATION:** The Administrative Conference's Special Committee on Financial Services has under consideration a draft recommendation on agency administration of failed or failing depository institutions, based on a report prepared by Professors Jonathan R. Macey, of Cornell University Law School, and Geoffrey P. Miller, of the University of Chicago Law School. Copies of the report are available from the Office of the Chairman of the Administrative Conference.

The Administrative Conference of the United States is an independent federal agency, established to promote improvements in the efficiency, adequacy and fairness of governmental processes (5 U.S.C. 571-576). In 1987, the Conference established the Special Committee on Financial Services to examine issues relating to procedural fairness and efficiency in the U.S.

financial services industry. The Committee has taken up several issues, including the adjudication practices and procedures of the federal bank regulatory agencies, the Federal Reserve Board's handling of applications under the Bank Holding Company Act, and the resolution of claims against savings receiverships.

The Committee currently is examining the enforcement powers of the federal bank regulatory agencies; the informal audit and settlement practices of the bank regulatory agencies; and the role of those agencies in enforcing the Securities and Exchange Act of 1934, as well as the subject of the draft recommendation set forth below.

#### Draft Recommendation: Agency Administration of Failed or Failing Depository Institutions

##### Special Committee on Financial Services

##### Introduction

Not since the Great Depression has there been such concern about the fundamental stability of the U.S. banking industry. The apparent decline in public confidence stems from the unprecedented increase in the incidence of bank failures in the past decade and also from the heavy losses in the insurance funds overseen by the bank and thrift regulatory agencies that were designed to protect depositors from losses in such failures. One hundred twenty banks failed in 1985; 145 failed in 1986; 184 failed in 1987; and 200 failed in 1988.

The situation is even more grave in the savings and loan industry, in which a wave of failures and insolvencies has led to the passage of costly legislation to bail out failed thrifts which revamped the regulatory structure by abolishing the Federal Home Loan Bank Board and placing the replenished thrift insurance fund under the control of the banking regulators of the Federal Deposit Insurance Corporation.

The large stake that the Federal Government has in the financial stability of depository institutions, as well as the current system of regulation that imposes many of the costs of depository institution failures on the general public, suggest that the administrative procedures used by the Federal bank regulatory agencies in administering failed or failing depository

institutions warrant special attention. For the purposes of this discussion, the federal bank regulatory agencies that may be involved in administering failed or failing institutions include the Federal Deposit Insurance Corporation, the Office of Thrift Supervision in the Department of the Treasury, the National Credit Union Administration, and the Farm Credit Administration. Other federal agencies such as the Comptroller of the Currency and the Federal Reserve Board do not administer failed institutions *per se*, but play an important role in approving mergers and acquisitions of institutions.

The federal bank regulatory agencies use a variety of different methods for administering failed or failing depository institutions. The following methods used by the Federal Deposit Insurance Corporation are illustrative:

**Payoff and liquidation.** In a straight liquidation of a bank that has been declared insolvent, the FDIC, acting in its corporate capacity, pays off insured depositors. In its capacity as receiver of an insured closed bank, the FDIC acts as trustee of the insolvent estate for the benefit of creditors, including the FDIC insurance fund. To the extent that funds are disbursed to insured depositors, the FDIC assumes the rights of such depositors as creditors. As receiver, the FDIC liquidates the bank's assets for the benefit of all creditors, including the insurance fund.

**Modified payoffs.** In a modified payoff, the FDIC makes full payments to insured depositors and partial payments to uninsured depositors, based on the FDIC's estimate of the proceeds from liquidation of the failed bank. The FDIC then liquidates the institution, and any excess is paid over to the uninsured depositors and other bank creditors.

**Purchase-and-assumption transactions.** In a purchase-and-assumption (P & A) transaction, deposit accounts and certain other liabilities of the failed depository institution are assumed by another institution, which also purchases some of the failed institution's assets. Thus, such a transaction essentially involves the merger of a failed institution into a solvent one. Usually only performing assets (that is, loans that are being paid off) are purchased. Any shortfall between the value of the assets purchased and the value of the liabilities assumed is made up by the FDIC. The



FDIC as receiver generally purchases all poor and non-performing assets and seeks to collect on those assets to offset its losses.

*Open bank assistance.* Before a troubled bank has been formally declared insolvent, the FDIC may, in certain circumstances, provide it with direct financial assistance to prevent it from failing. The FDIC also has authority to purchase a bank's bad loans and to buy its preferred stock or other securities (not including common stock).

*Bridge banks.* Under powers granted by the Competitive Equality Banking Act of 1987, the FDIC may establish bridge banks, which purchase the assets and assume the deposits and certain other liabilities of the failed institution and continue to provide banking services. Such bridge banks may be operated for three years (an original two-year term, with the possibility of a one-year extension). Bridge banks are not required to have any capital and receive operating funds from the FDIC, as the Board of Directors deems "necessary or advisable." The bridge banks allows the FDIC more time to facilitate an acquisition.

The FDIC and the other agencies involved in administering failed or failing institutions should keep the following objectives in mind when selecting methods and procedures:

*Minimizing the cost to the deposit insurance funds.* In determining a procedure for handling a depository institution failure, the agency should consider which method will result in the least cost to the Federal insurance funds. No two insolvencies are identical. It is essential that the agency evaluate each failure on a case-by-case basis and not rule out any particular procedure because of possibly unfavorable experiences in the past. Where methods that involve full payouts to uninsured depositors are considered, the goal of minimizing the burden on the insurance funds can only be accomplished if the agency weighs the expected benefits of such procedures, including the potentially increased stability of the banking system as a whole, against the costs of such procedures, including the additional drain on the deposit insurance funds and the potential loss of market discipline in the form of monitoring by large uninsured depositors and other creditors. Open bank assistance, in particular, needs to be used with caution because of the risk that a depository institution will eventually fail, notwithstanding the infusion of new capital.

*Protecting small depositors.* Because small depositors may find it more difficult than large depositors to obtain

access to funds during the interim period between bank failure and repayment, the agency should remain sensitive to their need to obtain early access to their funds during the liquidation process, for example, by expediting payments to small depositors who may have to make home mortgage, tuition or other highly time-sensitive payments.

*Ensuring efficient auctions for failed institutions.* The process by which the agency determines who is eligible to bid at an auction for a failed depository institution is not clearly delineated. The agency conducting the auction normally does not give general public notice of impending auctions, but instead selectively contacts potential bidders. For example, established institutions are sometimes the only entities to participate in FDIC-managed auctions, while individual entrepreneurs and other potential bidders who might enter the industry by bidding on an insolvent bank are sometimes excluded. The reduction in the number of bidders may lower the amount paid for a failed bank, thus further straining the federal deposit insurance funds. On the other hand, selectivity in designating bidders may tend to weed out unreliable or inexperienced operators who might drive the institution into failure once again. Speedy actions may also be desirable in order to maintain public confidence in the banking system and ensure that insured depositors are paid off as rapidly as possible. The agencies might benefit from further study of alternatives available to auction procedures in order to weigh the costs and benefits of the existing system against the potential costs and benefits of increasing the number of bidders at auctions for failed depository institutions.

The acquisition of banking institutions while still solvent can forestall potential insolvencies. Thus the procedures for regulating such acquisitions deserve examination as part of the overall problem of how the Federal bank regulatory agencies proceed in the administration of failing institutions.

At present parties wishing to acquire a solvent depository institution must comply with a highly complex set of rules. The complexity and long lead time required for such acquisitions are potential deterrents to friendly as well as unfriendly acquisitions.

Three statutes control takeover activity for commercial banks:

*The Change in Bank Control Act (12 U.S.C. 1817(i))* makes it impossible for someone to take control of a commercial bank without prior regulatory review. The Act prevents any person from acquiring control of an FDIC-insured

bank, unless the appropriate Federal bank regulatory agency has been given 60 days' prior written notice of the proposed acquisition, although the FDIC frequently exercises its authority to reduce or extend this time limitation. Except as provided by regulation of the appropriate agency, the Change in Bank Control Act also requires that the acquirer disclose to the agency significant information about itself and the proposed acquisition, including its identity and the identity of each entity on whose behalf the acquisition is being made, and any strategic plans regarding disposition of the acquired bank.

*The Bank Merger Act (12 U.S.C. 1828(c))* requires the prior approval of the relevant Federal bank regulatory agency before one bank may merge or consolidate with another bank. In addition, the agency must notify the Attorney General and other bank regulatory agencies of the proposed transaction. These agencies must prepare reports on the competitive factors involved in the proposed merger.

*The Bank Holding Company Act (12 U.S.C. 1842)* governs bank acquisitions by corporations, including bank holding companies. A corporation or bank holding company must obtain approval from the Federal Reserve Board to acquire more than twenty-five percent or more of a bank's stock (or where the Board determines that control will exist), to acquire all or substantially all of a bank's assets, or to merge or consolidate with another bank holding company. A minimum of 30 days' notice to the regulator is required before approval of a transaction may be given. Thus, the Act grants the Federal Reserve Board considerable power over certain proposed takeovers of banks by bank holding companies and other corporations.

Under this regulatory structure, every transfer of control of an insured bank involves regulatory review or approval under varying criteria and uncertain time frames. By increasing the costs of acquiring banks, this structure might reduce the incentives of prospective bidders to engage in monitoring activities that serve the desirable goal of identifying undervalued and mismanaged banks. On the other hand, Congress established this regulatory structure in order to accomplish policy objectives that may require some impediments to bank takeovers as compared with firms in other fields. There is no justification, however, for procedures that deter bank takeovers if such procedures are not reasonably related to countervailing policy concerns. Similarly, there is no



justification for inconsistent or non-uniform policies and procedures for the approval of proposed mergers.

Accordingly, Congress should authorize<sup>1</sup> the Federal bank regulatory agencies to consider establishing an interagency task force to rationalize and streamline the process for changes in bank control by merger, acquisition, or any other means, both in hostile and friendly situations. Such an interagency task force should have the goal of rationalizing and streamlining the bank acquisition, change in control and merger process. Clear and consistent rules among agencies would provide greater certainty to potential bidders and targets as to their legal rights and obligations. If appropriate, the task force should recommend legislative solutions.

#### *Recommendation*

#### **I. Procedures for Administering Failed or Failing Depository Institutions**

1. Federal bank regulatory agencies should not display a general preference for any particular method of administering failed or failing depository institutions. Instead, all strategies should be evaluated in light of the facts and circumstances of each case, in order to ensure safer and more competent management, preserve the insurance funds, and maintain speed of insured deposit payoffs.

2. In determining procedures for dealing with failed or failing depository institutions, the Federal bank regulatory agencies should consider the extent to which protecting uninsured depositors might impose unnecessary costs on the insurance funds and reduce institutional incentives to avoid excessive risk-taking.

3. Before granting open bank assistance, the relevant Federal bank regulatory agency should: (1) Determine that there is a substantial probability that the institution will return to profitable operations within a reasonable time; (2) determine that the total costs of the open bank assistance will clearly be lower than the costs of any alternative procedure; (3) insist as a prerequisite to such assistance that the depository institution also receive a significant infusion of capital from non-government sources; and (4) ordinarily require replacement of top management, unless the agency concludes that the problems of the depository institution were clearly beyond the control or influence of such management.

4. The relevant Federal bank regulatory agencies should study the process by which ownership of failed institutions is transferred to outside buyers. Specifically, the agencies should weigh the costs and benefits of (a) extending the length of time for bidding for the assets of failed institutions, and (b) ensuring that all eligible parties are notified and given an opportunity to bid.

#### **II. Protection of Small Depositors**

The Federal bank regulatory agencies should be sensitive to the needs of small, insured depositors in failed depository institutions who need immediate access to funds to make home mortgage payments, tuition payments or other highly time-sensitive obligations.

#### **III. Procedures for Administering Acquisitions of Solvent Institutions**

1. The Federal bank regulatory agencies should review their procedures for approving acquisitions or other ownership changes of solvent depository institutions in order to streamline such procedures and provide potential acquirors and targets with clear guidelines regarding the approval process.

2. Congress should authorize the Federal bank regulatory agencies to establish an interagency task force to review and evaluate acquisition, change in control, and merger applications in order to shorten, harmonize and rationalize such procedures for both hostile and friendly situations.

Dated: August 17, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89-19839 Filed 8-22-89; 8:45 am]

BILLING CODE 8110-01-M

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 981**

[FV-89-089PR]

#### **Expenses and Assessment Rate for Almonds Grown in California**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize expenditures and establish an assessment rate for the 1989-90 crop year under the marketing agreement and order for California almonds. Funds to administer this program are derived from assessments on handlers. This

action is needed in order for the Almond Board of California (Board), the agency responsible for local administration of the order, to have sufficient funds to meet the expenses of operating the program. Expenses are incurred on a continuous basis.

**DATES:** Comments must be received by September 5, 1989.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 447-5120.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, regulating the handling of almonds grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of California almonds, and there are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR

<sup>1</sup> Although such a task force could be established without the need for legislation, legislation would likely facilitate the agency process.



121.1) as those having average gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of almond handlers and producers may be classified as small entities.

The marketing order for California almonds requires that the assessment rate for a particular crop year shall apply to all assessable almonds handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of regulated almonds. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of assessable almonds. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Board shortly after July 1 of each crop year, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Board will have funds to pay its expenses.

The Board met on July 21, 1989, and unanimously recommended 1989-90 marketing order program expenditures of \$12,339,618, and an assessment rate for the 1989-90 crop year of 2.75 cents per pound (kernelweight basis). The Board also recommended that handlers should be eligible to receive credit for their own marketing promotion activities for up to 2.50 cents of this 2.75-cent-per-pound assessment rate.

The 2.75-cent-per-pound 1989-90 assessment rate compares with a 1988-89 assessment rate of 2.65 cents per pound. While the 2.50-cent-per-pound creditable rate is the same as the 1988-89 rate, the 0.25-cent-per-pound non-creditable portion of the total assessment, which handlers must pay to the Board, is 0.10 cents higher than the 0.15-cent-per-pound 1988-89 rate.

Projected expenses of \$12,339,618 for 1989-90 compare with 1988-89 budgeted expenses of \$16,130,309. Budget categories for 1989-90 are \$890,200 for

administrative expenses, \$352,018 for production research, \$937,700 for public relations, and \$59,700 for the 1990 crop estimate. Comparable actual expenditures for the 1988-89 crop were \$779,561, \$197,101, \$996,900, and \$56,800, respectively. The remaining \$10,100,000 of proposed 1989-90 expenses is the estimated amount which handlers would spend on their own marketing promotion activities based on a projected 1989-90 marketable California almond production of 404,000,000 kernelweight pounds and assumes that all handlers receive full credit against their 2.50-cent-per-pound creditable assessment obligations. For the 1988-89 crop year, \$13,925,000 was budgeted for handler marketing promotion activities based on a projected marketable production of 557,000,000 kernelweight pounds. An actual figure is not yet available because handlers have until December 31, 1989, to complete marketing promotion activities for which they may receive credit toward their 1988-89 crop year creditable assessment obligations.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. Further, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The Board must have sufficient funds to pay its expenses, which are incurred on a continuous basis.

#### List of Subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

#### PART 981—[AMENDED]

1. The authority citation for 7 CFR part 981 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 981.336 is revised to read as follows:

#### Almonds Grown in California

##### § 981.336 Expenses and assessment rate.

Expenses of \$12,339,618 by the Almond Board of California are authorized for the crop year ending June 30, 1990. An assessment rate for that crop year payable by each handler in accordance with § 981.81 is fixed at 2.75 cents per pound of almonds (kernelweight basis) less any amount credited pursuant to § 981.41, but not to exceed 2.50 cents per pound of almonds (kernelweight basis).

Dated: August 17, 1989.

**William J. Doyle,**

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89-19776 Filed 8-22-89; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 89-NM-144-AD]

#### Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 and 767 series airplanes, which would require the replacement of the autopilot-flight control computer (FCC) with modified units. This proposal is prompted by reports of intermittent altitude capture/hold and anomalous flight director airspeed command in the FCC. This condition, if not corrected, could lead to navigational errors affecting air traffic aircraft separation, or an incorrect airspeed at single engine takeoff, resulting in a reduced climb gradient.

**DATES:** Comments must be received no later than October 16, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-144-AD, 17900 Pacific Highway South, C-68968, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA,



Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

#### FOR FURTHER INFORMATION CONTACT:

Frank vanLeyne, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1948. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspect of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-144-AD." The post card will be date/time stamped and returned to the commenter.

#### Discussion

Boeing Model 757 and 767 airplanes equipped with FCC's, part numbers (P/N) S241R100-103, -105, and -106, have been shown to have anomalous flight director commands. This is caused by a software error which can result in the flight director commanding a 15 knot high airspeed under a single engine takeoff condition. If the crew does not detect this anomaly by cross checking the primary flight display with raw data, the takeoff climb could then follow a flight path below the takeoff obstacle clearance height. In addition, P/N S241T100-105 and 106 FCC's may, at

times, have the condition that the autopilot or the flight director does not capture the altitude that was selected on the mode control panel. This condition could compromise the airplane's airspace tolerances, if not corrected by the crew. This condition is the result of a modified memory storage device in the FCC that does not always initialize at zero.

The FAA has reviewed and approved Boeing Service Bulletins 767-22-0029 and 757-22-9921, both dated January 26, 1989, which provides instructions for replacing the FCC's with modified units that are not subject to these anomalies. Collins Service Bulletin FCC-701-22-16 provides instructions to rework the FCC's to the S241T100-108 configuration.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the FCC's with modified units, in accordance with the service bulletins previously mentioned.

There are approximately 185 Model 757 series airplanes and 239 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 109 Model 757 series airplanes and 106 Model 767 series airplanes of U.S. registry would be affected by this AD. It would take approximately 3 manhours per airplane to accomplish the required actions and the average labor cost would be \$40 per manhour. Collins, the manufacturer of the FCC, would modify the affected units at no charge to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$25,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the

regulatory docket. A copy of it may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

#### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 757 and 767 series airplanes, equipped with Collins flight control computer (FCC), certificated in any category. Compliance required within 12 months after the effective date of this AD, unless previously accomplished.

To prevent intermittent altitude hold, altitude capture, and/or flight director mistracking anomalies, accomplish the following:

A. Remove Collins manufactured FCC's which have Boeing P/N/ S241T100-103, -105, and -106, and replace with units reworked to P/N S241T100-108, in accordance with Boeing Service Bulletins 757-22-0021 or 767-22-0029, both dated January 26, 1989, as appropriate.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Avionics Inspector, who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office,



FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 15, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19794 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 89-NM-122-AD]

#### Airworthiness Directives; CASA Model C-212 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to all CASA Model C-212 series airplanes, which would require modification of the automatic power reserve (APR) system and revision to the Airplane Flight Manual that would provide new procedures for setting power. This proposal is prompted by reports that improper function of the APR system can cause improper thrust levels or engine overtorque. This condition, if not corrected, could, in the event of an engine failure on takeoff, result in the remaining engine exceeding maximum allowable torque levels and damage to or failure of that engine.

**DATE:** Comments must be received no later than October 16, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-122-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Contrucciones Aeronauticas, S.A. (CASA), Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-122-AD." The post card will be date/time stamped and returned to the commenter.

#### Discussion

The Dirección General de Aviación Civil (DGAC), which is the airworthiness authority of Spain, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on CASA Model C-212 series airplanes. The manufacturer has reported that improper function of the Automatic Power Reserve (APR) system, can cause improper thrust levels or engine overtorque. This condition, if not corrected, could, in the event of an engine failure on takeoff, result in the remaining engine exceeding maximum allowable torque levels and damage to or failure of that engine.

CASA has issued Service Bulletin 212-72-05, Revision 1, dated June 1, 1989, which describes procedures for replacing a switch and modifying the wiring of the APR system to provide fuel enrichment in the "Override" mode, and stipulates revisions to the Airplane Flight Manual, describing new procedures for setting power. The DGAC has classified this service bulletin as mandatory and has issued Spanish Airworthiness Directive 02-89 addressing this subject.

This airplane model is manufactured in Spain and Indonesia and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the United States, an AD is proposed which would require modification of the APR system and incorporation of a revision into the FAA-approved Airplane Flight Manual, describing new procedures for setting power, in accordance with the service bulletin previously described.

It is estimated that 43 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The estimated cost for the required parts is \$350 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$25,370.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:



**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**CASA:** Applies to all Model C-212 series airplanes, certificated in any category. Compliance required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent, following an engine failure on takeoff, damage to or failure of the remaining engine caused by overtaking, accomplish the following:

A. Modify the Automatic Power Reserve (APR) system in accordance with CASA Service Bulletin 212-72-05, Revision 1, dated June 1, 1989.

B. Upon accomplishment of the modification required by paragraph A., above, revise the FAA-approved Airplane Flight Manual to include the appropriate revision, which provides new procedures for setting power, as specified in Paragraph 1.B. of CASA Service Bulletin 212-72-05, Revision 1, dated June 1, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas, S.A. (CASA), Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 15, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 89-19795 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 73**

[Airspace Docket No. 89-ASO-34]

**Proposed Establishment of Restricted Area R-7105; PR**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Restricted Area R-7105 located in the vicinity of Lajas, PR. The restricted area is necessary to provide airspace to contain an aerostat radar surveillance (ASR) system for drug interdiction purposes. This action is in support of a project linked to the Customs Service Southern Border Drug Interdiction Strategy.

**DATE:** Comments must be received on or before October 2, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 89-ASO-34, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those

comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-34." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish Restricted Area R-7105 located in the vicinity of Lajas, PR. The restricted area is required to provide the necessary airspace to activate an ASR system for drug interdiction purposes. This project is part of the Customs Service Southern Border Drug Interdiction Strategy. Section 73.71 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is



certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

#### PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

**Authority.** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

#### § 73.71 [Amended]

2. Section 73.71 is amended as follows:

#### R-7105 Lajas, PR [New]

Boundaries. That airspace within a 3-nautical-mile radius centered on lat. 17°58'45" N., long. 67°04'55" W.

Designated altitudes. Surface to and including 15,000 feet MSL.

Times of designation. Continuous.  
Controlling agency. FAA, San Juan CERAP.  
Using agency. Puerto Rico Police Department.

Issued in Washington, DC, on August 14, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-19796 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 73

[Airspace Docket No. 89-ASO-33]

#### Proposed Establishment of Restricted Area R-2936; West Palm Beach, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Restricted Area R-2936 West Palm Beach, FL, located approximately 4 miles west of the William P. Gwinn Airport, Jupiter, FL. The Pratt and Whitney Company, a division of United Technologies, is developing a turbopump for the main engine of the Space Shuttle. Ground test firing of hydrogen gas, through an exhaust stack, would create significant turbulence and ambient air temperature increase which

would be hazardous up to and including 10,000 feet.

**DATE:** Comments must be received on or before October 2, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 89-ASO-33, Federal Aviation Administration, P. O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 89-ASO-33." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA

personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish Restricted Area R-2936. The Pratt and Whitney Company, a division of United Technologies, has requested the establishment of the restricted area. Pratt and Whitney has been awarded a contract to develop a turbopump for the main engine of the Space Shuttle. During test firing the hydrogen gas is released through an exhaust stack. Calculations indicate that significant turbulence and high air temperatures would be hazardous up to and including 10,000 feet. Section 73.29 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routing matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.



**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR part 73) as follows:

**PART 73—SPECIAL USE AIRSPACE**

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 73.29 [Amended]**

2. Section 73.29 is amended as follows:

**R-2936 West Palm Beach, FL [New]**

Boundaries. That airspace within a 1-nautical-mile radius centered at lat. 26°54'09"N., long 80°22'56"W.

Designated altitudes. Surfaced to and including 10,000 feet MSL.

Time of designation. Intermittent, by NOTAM.

Controlling agency. FAA, Palm Beach ATCT.

Using agency. United Technologies, Pratt and Whitney Company, West Palm Beach, FL.

Issued in Washington, DC, on August 10, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-19797 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

**Office of the Secretary****14 CFR Parts 380 and 399**

[OST Docket No. 46410; Notice No. 89-6A]

RIN 2105-AB50

**Price Advertising**

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Extension of comment period.

**SUMMARY:** This notice extends the comment period from August 25, 1989 until September 25, 1989 on the DOT's Price Advertising rulemaking (54 FR 31052, July 26, 1989). In the rulemaking, the Department is proposing to amend its rule and policy statement with respect to air transportation price advertising under 14 CFR parts 380 and 399 to comport with its current enforcement policy. The proposal would allow advertisers to list government-imposed and government-approved charges that are levied on a per passenger basis separately in price advertisements. It also would codify current practice allowing the advertisement of one-way fares that are

available only on a round-trip basis, provided the ads are clear with regard to the round-trip conditions.

**DATES:** Comments are due on or before September 25, 1989.

**ADDRESSES:** Comments must be filed in Room 4107, Docket 46410, U.S. Department of Transportation, 400 7th St., SW., Washington DC 20590. Late-filed comments will be considered to the extent possible.

**FOR FURTHER INFORMATION CONTACT:**

Samuel E. Whitehorn, Office of the General Counsel, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** On August 15, 1989, the Attorney General of the State of Texas (Texas AG), on behalf of California, Iowa, Kansas, and New York, submitted a request for an extension of the comment period for 90 days. The Texas AG claims that the extension is needed because the rulemaking is a significant change from existing law, other organizations have indicated to the Texas AG that they also need additional time, and the State of Texas needs information recently requested from the Department under the Freedom of Information Act to prepare an adequate comment.

We do not believe that a 90 day extension is warranted. First, the rulemaking "merely codifies existing practices and enforcement policies" (54 FR at 31054), and does not constitute a change from existing law. Second, to date no other requests for extensions have been filed. Third, while the State has filed a FOIA request, the mere filing does not justify an extension. Allowing persons to seek more time on that basis would provide an avenue for others to seek delays in the rulemaking process. Finally, even under the Department's Regulatory Policies and Procedures, significant rulemakings are generally afforded only a 60-day comment period (44 FR 11044, Feb. 26, 1979). However, we have decided to exercise our discretion and provide an additional 30 days for persons to comment. Comments are now due on or before September 25, 1989.

Issued in Washington, DC on August 21, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-19999 Filed 8-21-89; 1:51 pm]

BILLING CODE 4910-62-M

**DEPARTMENT OF JUSTICE****Office of the Attorney General****28 CFR Part 0**

[Order No. 1360-89]

**Establishment of User Fees**

**AGENCY:** Office of the Attorney General, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Justice, United States National Central Bureau (USNCB)—INTERPOL is proposing to amend its regulations to establish a system of user fees for the noncriminal inquiries it processes yearly. The effect of the change will permit the USNCB to recover the administrative costs the USNCB incurs when processing these noncriminal inquiries.

**DATES:** Comments must be received on or before September 22, 1989.

**ADDRESSES:** Interested persons are invited to submit written comments regarding this change to Chief, United States National Central Bureau (INTERPOL), U.S. Department of Justice, Washington, DC 20530. All comments received will be available for public inspection only in the U.S. National Central Bureau (INTERPOL), 600 E Street, NW., Suite 600, Washington, DC 20530, and only between the hours of 9:00 a.m. through 5:00 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Ronald B. Abrams, Counsel to the U.S. National Central Bureau (INTERPOL), (202) 272-8383. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The regulation is being expanded to permit the collection of user fees for noncriminal inquiries to the USNCB, such as background checks pertaining to adoptions, gaming licensing, and state bar examination applicants. The fees are intended to recover the administrative costs the USNCB incurs in processing the noncriminal inquiries.

This is not a major rule within the meaning of Executive Order 12291. This will not have an impact on a significant number of small businesses. 5 U.S.C. 901.

**List of Subjects in 28 CFR Part 0**

Authority; delegations (Government agencies).

By the authority vested in me including 28 U.S.C. 509, and 5 U.S.C. 301, subpart F-2 of part 0 of title 28 of the Code of Federal Regulations is proposed to be amended as follows:



## PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 3101; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4201 et seq., 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 et seq.; 50 U.S.C. App. 1989b, 2001-2017p; Pub. L. 91-513, sec. 501; E.O. 11919; E.O. 11267; E.O. 11300.

2. Subpart F-2, § 0.34 is amended by adding a new paragraph (g) to read as follows:

### 0.34 General functions.

(g) Establish and collect user fees to process name checks and background records for licensing, humanitarian and other non-law enforcement purposes.

Dated: August 15, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-19805 Filed 8-22-89; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF VETERANS AFFAIRS

### DEPARTMENT OF DEFENSE

#### 38 CFR Part 21

RIN 2900-AD88

#### Veterans Education; State Approving Agencies and the Post-Vietnam Era Veterans' Educational Assistance Program

**AGENCY:** Department of Veterans Affairs and the Department of Defense.

**ACTION:** Proposed regulations.

**SUMMARY:** The Veterans' Employment, Training and Counseling Amendments of 1988 contain several provisions which affect the Department of Veterans Affairs' (VA's) relationships with the State approving agencies (SAAs). In order to implement the new provisions of law VA has proposed a new section, § 21.4155, in 38 CFR part 21, subpart D. (See 54 FR 21230, May 17, 1989.) In administering Chapter 32, Title 38, United States Code, VA will apply the provisions of that new section in the same manner that it will be applied in the administration of chapters 34 and 36.

**DATES:** VA the Department of Defense are proposing to make the proposed amendment to § 21.5150, like the provision of law it implements, retroactively effective on May 20, 1988. Comments must be received on or

before September 22, 1989. Comments will be available for public inspection until October 2, 1989.

**ADDRESSES:** Send written comments to: The Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comment received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until October 2, 1989.

#### FOR FURTHER INFORMATION CONTACT:

Alan R. Zoeckler, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2092.

**SUPPLEMENTARY INFORMATION:** The Veterans' Employment, Training and Counseling Amendments of 1988 (Pub. L. 100-323) contain several provisions which affect VA's relationships with the various SAAs. Previously, the law provided that no department, agency, or officer of the United States could exercise any supervision or control over a State approving agency. This provision was the foundation of VA's relationships with SAAs.

Public Law 100-323 envisions a substantially new relationship. In particular, the law requires the Secretary of Veterans Affairs to conduct, in conjunction with SAAs, an annual evaluation of each SAA on the basis of standards developed by VA with the cooperation of the SAAs and to give each SAA an opportunity to comment on its evaluation. VA must take into account the results of the annual evaluation of the SAA when negotiating the terms and conditions of a contract or agreement with the SAA. VA may now supervise functionally the providing of approval services by the SAAs. VA must cooperate with SAAs in developing and implementing, to the extent practicable, a uniform national curriculum for training new SAA employees and for the continuing training of SAA employees. VA with the SAAs will sponsor the providing of this training. Finally, VA will prescribe prototype qualification and performance standards, developed in conjunction with SAAs, for use by the SAAs in the development of individual qualification and performance standards for SAA personnel carrying out approval duties.

In order to implement many of these new provisions of law, VA has proposed a new section, § 21.4155. In

administering the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) the Department intends to apply the provisions of § 21.4155 in the same manner as it is applied to the administration of the Vietnam Era GI Bill.

VA and the Department of Defense find that good cause exists for making the amendment to § 21.5150, like the provision of law it implements, retroactively effective on May 20, 1988. To achieve the maximum benefit of this legislation for the State approving agencies it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; and would complicate administration of these provisions of law.

VA and the Department of Defense have determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and Secretary of Defense have certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulation affects only State approving agencies. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

#### List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.



Approved: May 26, 1989.  
Edward J. Derwinski,  
Secretary of Veterans Affairs.

Approved: June 30, 1989.  
Donald W. Jones,  
Lieutenant General, USA, Deputy Assistant  
Secretary, (Military Manpower & Personnel  
Policy).

## PART 21—[AMENDED]

In 38 CFR part 21, Vocational  
Rehabilitation and Education, § 21.5150  
is revised to read as follows:

### § 21.5150 State approving agencies.

In administering chapter 32, title 38,  
United States Code, VA will apply the  
provisions of the following paragraphs  
in the same manner as they are applied  
for the administration of chapters 34 and  
36:

- (a) Section 21.4150 (except par. (e))—  
Designation
- (b) Section 21.4151—Cooperation
- (c) Section 21.4152—Control by  
agencies of the United States
- (d) Section 21.4153—Reimbursement  
of expenses
- (e) Section 21.4154—Report of  
activities
- (f) Section 21.4155—Evaluations of  
State approving agency performance

(Authority: 38 U.S.C. 1641, 1770-1774, 1774A;  
Pub. L. 94-502, Pub. L. 100-323)

[FR Doc. 89-19762 Filed 8-22-89; 8:45 am]

BILLING CODE 8320-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

[Docket No. FEMA-6965]

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency  
Management Agency.

### ACTION: Proposed rule.

**SUMMARY:** Technical information or  
comments are solicited on the proposed  
modified base (100-year) flood  
elevations listed below for selected  
locations in the nation. These base (100-  
year) flood elevations are the basis for  
the floodplain management measures  
that the community is required to either  
adopt or show evidence of being already  
in effect in order to qualify or remain  
qualified for participation in the  
National Flood Insurance Program.

**DATES:** The period for comment will be  
ninety (90) days following the second  
publication of the proposed rule in a  
newspaper of local circulation in each  
community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:**  
Mr. John L. Matticks, Chief, Risk Studies  
Division, Federal Insurance  
Administration, Federal Emergency  
Management Agency, Washington, DC  
20472, (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The  
Federal Emergency Management  
Agency gives notice of the proposed  
determinations of modified base (100-  
year) flood elevations for selected  
locations in the nation, in accordance  
with section 110 of the Flood Disaster  
Protection Act of 1973 (Pub. L. 93-234),  
87 Stat. 980, which added section 1363 to  
the National Flood Insurance Act of  
1968 (Title XIII of the Housing and  
Urban Development Act of 1968 (Pub. L.  
90-448)), 42 U.S.C. 4001-4128, and 44  
CFR 67.4(a).

These elevations, together with the  
floodplain management required by  
§ 60.3 of the program regulations, are the  
minimum that are required. They should  
not be construed to mean that the  
community must change any existing  
ordinances that are more stringent in  
their floodplain management

requirements. The community may at  
any time enact stricter requirements on  
its own, or pursuant to policies  
established by other Federal, State, or  
regional entities. These proposed  
modified elevations will also be used to  
calculate the appropriate flood  
insurance premium rates for new  
buildings and their contents and for the  
second layer of insurance on existing  
buildings and their contents. Pursuant to  
the provisions of 5 U.S.C. 605(b), the  
Administrator, to whom authority has  
been delegated by the Director, Federal  
Emergency Management Agency, hereby  
certifies that the proposed modified  
flood elevation determinations, if  
promulgated, will not have a significant  
economic impact on a substantial  
number of small entities. A flood  
elevation determination under section  
1363 forms the basis for new local  
ordinances, which, if adopted by a local  
community, will govern future  
construction within the floodplain area.  
The local community voluntarily adopts  
floodplain ordinances in accord with  
these elevations. Even if ordinances are  
adopted in compliance with Federal  
standards, the elevations prescribe how  
high to build in the floodplain and do  
not prescribe development. Thus, this  
action only forms the basis for future  
local actions. It imposes no new  
requirement; of itself it has no economic  
impact.

### List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for Part 67  
continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.,  
Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed modified base flood  
elevations for selected locations are:

### PROPOSED MODIFIED BASE FLOOD ELEVATIONS

| State      | City/town/county                         | Source of flooding | Location  | #Depth in feet above<br>ground *Elevation in feet<br>(NGVD) |          |
|------------|--|--------------------|---|---|----------|
|            |  |                    |   | Existing  | Modified |
| Washington | City of Sedro Woolley,<br>Skagit County. | Skagit River       | Just east of Collins Road   | None  | *43      |
|            |  |                    | Approximately 3,700 feet west (downstream) of<br>State Highway 9. | None  | *44      |
|            |  |                    | Approximately 1,200 feet west (downstream) of<br>State Highway 9. | None  | *45      |

Maps are available for review at the Planning Department, 720 Murdock Street, Sedro Woolley, Washington.

Send comments to The Honorable Donald Walley, Mayor, City of Sedro Woolley, 720 Murdock Street, Sedro Woolley, Washington 98284.



Issued: August 17, 1989.

Harold T. Duryeo,

Administrator, Federal Insurance  
Administration.

[FR Doc. 89-19828 Filed 8-22-89; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 15

[Gen. Docket No. 89-354 FCC 89-254]

### Spread Spectrum Systems

AGENCY: Federal Communications  
Commission.

ACTION: Proposed rules.

**SUMMARY:** The notice of proposed rule making proposes to clarify the rules concerning the operation of spread spectrum systems under the part 15 rules by specifying the minimum length for the spreading codes for direct sequence spread spectrum systems. A minimum spreading code of 127 pseudorandomly generated bits is proposed. This requirement appears necessary to provide guidance to the industry and to minimize the potential interference that could be generated from the 1 watt transmitter power which these systems are authorized to transmit. The notice of proposed rule making also proposes to increase the maximum hopping channel bandwidth for frequency hopping systems from 25 kHz to 500 kHz. As the maximum transmitted power limit of 1 watt will be retained for these systems, the proposed increase in channel bandwidth would in most cases decrease potential interference by spreading the transmitted power over a larger bandwidth.

**DATES:** Comments are due on or before October 2, 1989, and Reply Comments are due on or before October 17, 1989.

**ADDRESS:** Federal Communications  
Commission, 1919 M Street, NW.,  
Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:**  
Dr. Joseph F. McNulty, Engineering  
Evaluation Branch, Office of Engineering  
and Technology, (301) 725-1585.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's notice of proposed rule making in GEN Docket No. 89-354, FCC 89-254 adopted August 9, 1989, and released August 16, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also

be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### Summary of the Notice of Proposed Rule Making

1. Spread spectrum systems are communications systems in which information is conveyed by modulation of a carrier by some conventional means, but the bandwidth is deliberately broadened by means of a spreading function over a much wider bandwidth than that which would be needed to convey the information alone. On May 9, 1985, in the First Report and Order in General Docket No. 81-413 (50 FR 25234, June 18, 1985), the Commission adopted provisions for the use of spread spectrum emissions under § 15.126 of the rules. The rules allowed direct sequence and frequency hopping spread spectrum systems to operate in the 902-928 MHz, 2400-2483.5 MHz and 5725-5850 MHz frequency bands. Since that time, the Commission has received many requests for clarification of the minimum length of the spreading code.

2. In our analysis to determine an appropriate minimum length for the spreading code of direct sequence systems, the rules governing spread spectrum operation in the Amateur Radio Service were reviewed. The Amateur Radio rules require that a minimum spreading code length of 127 bits be used. This minimum length also appears a reasonable choice as the minimum length standard for part 15 direct sequence systems. Pseudorandomly generated codes of this length will provide an adequate and uniform spreading of the transmitted energy. As such codes are fairly easy to generate, the proposed rules would not be expected to impose a new technological burden upon industry. Therefore, we are proposing a minimum pseudorandomly generated code length of 127 bits.

3. To further encourage the development of this technology, the proposed rules would allow frequency hopping systems to operate in the 902-928 MHz, 2400-2483.5 MHz and 5725-5850 MHz bands with hopping channel bandwidths of 500 kHz. As the maximum output power for these systems will still be maintained at 1 Watt, the larger hopping channel bandwidth would in most cases reduce any potential interference from these systems since the transmitted power is being spread over a larger bandwidth. However, to accommodate nonoverlapping hopping channels of 500 kHz bandwidth in the 902-928 MHz

band, the minimum number of hopping frequencies prescribed for a frequency hopping system operating in this band would be reduced from 75 to 50. To further reduce potential interference to other communications systems operating within these bands, the new rules propose that the channel occupancy time for frequency hopping systems be averaged over a 5 second interval in the 902-928 MHz band and a 7.5 second interval in the 2400-2483.5 MHz and 5725-5850 MHz bands rather than the present 30 second interval.

4. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231 for rules governing permissible ex parte contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities because it provides guidance and minimum standards consistent with the industry's needs. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no additional information collection requirement on the public.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419, interested parties may file comments on or before October 2, 1989, and reply comments on or before October 17, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

### List of Subjects

#### 47 CFR Part 2

Terminology, Radio.

#### 47 CFR Part 15

Intentional radiators, Radio.

### Rule Changes

A. Title 47 of the Code of Federal Regulations, part 2, is proposed to be amended as follows:

### PART 2—[AMENDED]

1. The authority citation for part 2 would continue to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, and 307.

2. Section 2.1 would be amended by adding the following definition in alphabetical order:



**§ 2.1 Terms and definitions.**

*Pseudorandom sequence.* A pseudorandom sequence is a sequence of data which has some of the characteristics of a random sequence but also has some characteristics which are not random. It resembles a true random sequence in that the one bits and zero bits of the sequence are distributed randomly throughout every length, *N*, of the sequence and the total numbers of the one and zero bits in that length are approximately equal. It cannot be called a true random sequence however because it consists of a fixed number (or length) of coded bits which repeats itself exactly whenever that length is exceeded, and because it is generated by a fixed algorithm from some fixed initial state.

B. Title 47 of the Code of Federal Regulations, part 15, is proposed to be amended as follows:

**PART 15—[AMENDED]**

1. The authority citation for part 15 would continue to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.247 would be amended by revising paragraph (a)(1) and adding paragraph (d) to read as follows:

**§ 15.247 Operation within the Bands 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz.**

(a) \* \* \*

(1) Frequency hopping systems shall have non-overlapping hopping channels and the 20 dB bandwidth of the hopping channel shall not exceed 500 kHz. The hopping channel carrier frequencies shall be separated by at least 25 kHz, or the 20 dB bandwidth of the hopping channel, whichever is greater. At least 50 hopping frequencies shall be used for frequency hopping systems operating in the 902–928 MHz band; at least 75 hopping frequencies shall be used for frequency hopping systems operating in the 2400–2483.5 MHz and 5725–5850 MHz bands. The average time of occupancy on any frequency shall not be greater than 100 milliseconds within a 5 second period for frequency hopping systems operating in the 902–928 MHz band, and 100 milliseconds within any 7.5 second period for frequency hopping systems operating in the 2400–2483.5 MHz and 5725–5850 MHz bands. Each hopping frequency must be selected at least once in the hopping sequence before it repeats.

(d) For direct sequence systems, a pseudorandom spreading code which generates at least 127 binary bits before repeating shall be used. Alternative codes to produce the spreading for direct sequence systems will be accepted provided that the spreading of the resulting emissions is at least as random as that which would be produced using a code which generates 127 bits before repeating.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–19766 Filed 8–22–89; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 88–518, RM–6123]

**Television Broadcasting Services; Yreka City, CA, and Medford, OR**

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Further Notice.

**SUMMARY:** The Commission is issuing a Further Notice in the above-referenced proceeding to provide an opportunity to comment on a proposal by Junko and Bobby C. Shehan to substitute Channel 26 for Channel 27 at Medford, Oregon, and to modify their application accordingly. Petitioners' original proposal to substitute Channel \*35 for Channel \*20+ at Yreka City, California, to accommodate their intended site for Channel 27 at Medford was withdrawn. See 53 FR 45524, November 10, 1988. Coordinates for Channel 26 at Medford are 42–17–54 and 122–44–59.

Although the Commission has imposed a freeze on TV allotments, or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby.

**DATES:** Comments must be filed on or before October 6, 1989, and reply comments on or before October 23, 1989.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Junko and Bobby C. Shehan, 2032 Amsterdam Lane, Modesto, CA 95356.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No.

88–518, adopted August 1, 1989, and released August 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

Federal Communications Commission,

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19645 Filed 8–22–89; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 100**

[MM Docket No. 89–355; FCC 89–258]

**Policies and Requirements Regarding Potential Uses of Certain Orbital Allocations by Operators in the Direct Broadcast Satellite Service**

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; policies and requirements.

**SUMMARY:** This action solicits comment on what policies to adopt and requirements to impose in connection with the possible use of Direct Broadcast Satellite (DBS) signals that cover the entire continental United States with single DBS channels at the eastern DBS orbital positions, and corresponding use of western DBS orbital positions for alternative services. This mode of transmission had not been heretofore authorized, so the possible effects, including ancillary services now possibly available, had not been



previously considered. The Commission intends to adopt requirements and policies to govern such alternative services from the western DBS orbital locations, and in so doing will consider the effects of its action on possible DBS service to Alaska and Hawaii.

**DATES:** Comments must be submitted on or before October 13, 1989, and reply comments on or before November 13, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Distribution Services Branch, Bruce Romano, (202) 632-9356.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking, in MM Docket No. 89-355, FCC 89-258, Adopted August 2, 1989, and Released August 15, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### Summary of Notice of Proposed Rulemaking in MM Docket No. 89-355

1. In this notice of proposed rulemaking, the Commission is seeking comment on the requirements or policies that may be appropriate to govern the services which may be offered on DBS frequencies from the western DBS orbital locations if full DBS service is provided from the DBS eastern orbital locations via full-CONUS signals.

2. The notice is issued in conjunction with Continental Satellite Corporation, FCC 89-257, adopted August 2, 1989, released August 15, 1989, in which the Commission formalized the requirement that DBS orbit/channel allocations be made in east/west pairs, provided for DBS service via full-CONUS signals, and granted a number of conditional construction permits for DBS systems.

3. The Commission seeks comment on a variety of issues implicated by its action in Continental Satellite Corporation, including application and licensing requirements and operational restrictions for service from the western DBS orbital allocations. It also seeks comment on the effects of full-CONUS signals and alternative services from western DBS orbital allocations on DBS service to Alaska and Hawaii, and what provisions, if any, may be appropriate to affect the provision of such service.

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposals will not, if promulgated, have a significant economic impact on a substantial number of small entities, as only a small number of entities are potentially affected by the proposals, and most of those affected will not be small entities.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease the burden hours imposed on the public.

6. This is a restricted notice and comment rule making proceeding. See § 1.1229 of the Commission's rules, 47 CFR 1.1229, for rules regarding permissible *ex parte* contacts.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 13, 1989, and reply comments on or before November 13, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

#### List of Subjects in 47 CFR Part 100

Direct broadcast satellite service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-19767 Filed 8-22-89; 8:45 am]

BILLING CODE 6712-01-M

#### PANAMA CANAL COMMISSION

##### 48 CFR Ch. 35

RIN 3207-AA10

##### Acquisition Regulation; Establishment of Chapter 35

**AGENCY:** Panama Canal Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This notice invites written comments on the Panama Canal Commission proposal to establish the Panama Canal Commission Acquisition Regulation (PAR) as chapter 35 of the Federal Acquisition Regulations System.

The proposed PAR implements and supplements the Federal Acquisition Regulation (FAR), which is the primary acquisition regulation that governs the contracting process of all executive agencies or otherwise controls the relationship between such agencies and their contractors or prospective

contractors. This action is necessary to provide regulatory coverage pertinent to Commission acquisitions that is not otherwise provided in the FAR.

**DATE:** Written comments must be submitted not later than October 23, 1989, for consideration in the formulation of a final rule.

**ADDRESS:** The full text of the PAR proposed rule is available upon request, by telephoning Barbara Fuller at (202) 634-6441, or writing to Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, DC 20036-4996.

Written comments should be submitted to Richard D. Morgan, Procurement Executive, Panama Canal Commission, at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, telephone (202) 634-6441, or Jim Doyle, Assistant Procurement Executive, telephone in Balboa, Republic of Panama, 011-507-52-4074.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Procedural Requirements
  - A. Executive Order 12291
  - B. Regulatory Flexibility Act
  - C. Paperwork Reduction Act
- III. Public Comments

##### I. Background

The Federal Acquisition Regulation (FAR) is the uniform acquisition regulation for all executive agencies of the United States Government. The FAR is codified as chapter 1 of title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies and because as a practical matter the FAR cannot contain all the procedural details of how to implement a particular policy, the FAR authorizes agencies to issue implementing and supplementing regulations. The regulation being proposed here represents the Commission's necessary implementation and supplementation of the FAR.

Since the FAR is the uniform Government-wide acquisition regulation, reviewers of the proposed PAR are advised that lack of coverage of a particular topic in the PAR means that the Commission shall use the FAR coverage of the topic without further implementing detail.

##### II. Procedural Requirements

A. *Executive Order 12291.* The proposed rule is not classified as a major rule because it does not meet the



criteria for a major rule established in the executive order.

**B. Regulatory Flexibility Act.** The Panama Canal Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities because the rule serves only to implement or supplement the Federal Acquisition Regulation.

**C. Paperwork Reduction Act.** The information collection and recordkeeping requirements that are imposed on the public by the proposed rule were approved by the Office of Management and Budget (OMB) and have been assigned OMB Control No. 3207-0007.

### III. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments in writing with respect to the proposed PAR. Any information considered confidential must be so identified and submitted in writing, one copy only. The Commission reserves the right to determine the confidential status of the information and to treat it according to its determination. Comments should be submitted to Richard D. Morgan at the address indicated under the "ADDRESS" caption of this preamble. All comments received not later than the date under the "DATE" caption of the preamble will be considered prior to publication of the PAR as a final rule.

#### List of Subjects in 49 CFR Ch.35

Government procurement.

Authority: 40 U.S.C. 486(C); 49 CFR 1.3.

Dated: July 19, 1989.

Michael Rhode, Jr.,

Assistant to the Chairman and Secretary.

[FR Doc. 89-19775 Filed 8-22-89; 8:45 am]

BILLING CODE 3640-04-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 85-18; Notice 03]

### Federal Motor Vehicle Safety Standards; Reflecting Surfaces

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Termination of rulemaking.

**SUMMARY:** This notice terminates a rulemaking action commenced by the agency in a notice of proposed rulemaking (NPRM) that would have extended Standard No. 107, *Reflecting*

*Surfaces*, to non-metallic materials used in the list of components already specified in the standard. In view of the lack of substantiation of a problem, the apparent insignificance of any problem that does exist, and the costliness of developing and using a more complex test procedure, NHTSA has determined that extending the standard is not appropriate. This conclusion is reinforced by resource considerations. Given the amount of resources already committed to the agency's other safety rulemaking priorities, NHTSA cannot justify the substantial additional resource commitment which would be required to extend Standard No. 107 to non-metallic components.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Kevin Cavey, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington DC 20590. Telephone: (202) 366-5271.

#### SUPPLEMENTARY INFORMATION:

##### Background

Federal Motor Vehicle Safety Standard No. 107, *Reflecting Surfaces*, (49 CFR 571.107) specifies reflecting surface requirements and a test procedure for certain bright metal vehicle components in the driver's field of view. The components listed in the standard, and therefore subject to its requirements, are the windshield wiper arms and blades, inside windshield moldings, horn ring and the hub of the steering wheel assembly, and the inside rearview mirror frame and mounting bracket. The standard applies to passenger cars, multipurpose passenger vehicles, trucks and buses, but does not apply to items of motor vehicle equipment.

Standard No. 107's intended purpose is to prevent glare (i.e., reflected sunlight) from the surfaces of the above mentioned components in the driver's field of view from hindering the safe and normal operation of a motor vehicle. The standard does this by regulating the specular gloss, which is the amount of light reflected from a test specimen. The specular gloss of the covered components must not exceed a specified test value referred to in the standard.

On February 14, 1985, Ms. Patricia Hill petitioned the agency to amend the standard, claiming that it was "obsolete, excessively specific, and unresponsive to changes in design, styling, and materials application that have occurred" since its issuance. The petitioner sought to expand the standard to any highly reflective component within the driver's field of view, and in the alternative, to high gloss non-

metallic materials used in components specified in the standard.

On January 7, 1986, the agency granted the petition and issued a notice requesting comments concerning the effect of glare from unregulated components within the driver's field of view. 51 FR 657. In this notice, the agency specifically asked for comments concerning (1) whether the standard should be expanded to include additional components in the driver's field of view other than those currently listed in S4; (2) whether the standard should be expanded to include non-metallic components; (3) whether the incorporation by reference of the ASTM Standard established in 1962 to test the specular gloss should be updated to the 1980 revised ASTM Standard; and (4) whether Standard No. 107 should be revised to add a certification and marking requirement for manufacturers of the listed components. Given the absence of information regarding the need to regulate non-metallic components, the notice also raised the larger question of whether a safety need existed to retain the performance criteria of the existing standard.

On November 13, 1987, NHTSA issued a notice of proposed rulemaking (NPRM) proposing to revise Standard No. 107 to extend the specular gloss requirements to non-metallic materials used in parts that are currently listed in the standard. 52 FR 43628. The agency tentatively concluded that (1) "the absence of accidents or consumer complaints attributed to glare from components subject to Standard No. 107 [was] an insufficient basis to conclude that a safety hazard would not exist in the absence of the standard." (2) there was "no valid reason to distinguish between the safety hazards that could be caused by highly reflective metallic components versus highly reflective non-metallic components," and (3) that "no safety need has been demonstrated that would warrant adding components to Standard No. 107 at the time" because the identified components were the principal sources of glare. Accordingly, while proposing to extend the standard to those non-metallic surfaces already specified in Standard No. 107, the agency declined to propose rescinding the standard or expanding it to additional parts within the driver's field of view. The agency also did not propose any additional labeling or certification requirements.

### II. Summary of Comments

NHTSA received six comments in response to the NPRM. The commenters were all motor vehicle manufacturers:



Blue Bird, Chrysler Motors, Mazda, Volkswagen of America, General Motors, and Ford. The commenters typically restated their views made to the request for comments in Docket 85-18, Notice 1. Twelve vehicle manufacturers, a testing laboratory, and an individual submitted comments to that earlier docket.

#### *A. Safety Need and Costs*

General Motors, Chrysler, and Mazda stated that there was no safety need and no benefits to justify extending the standard to non-metallic materials used in parts currently specified in the standard. These commenters believed that the costs related to extending the standard in this manner were unnecessary and excessive. Accordingly, they concluded that extending Standard No. 107 to parts made with non-metallic materials was not warranted.

Chrysler, Mazda, and General Motors further commented that Standard No. 107 should be rescinded because there is no safety need to support its retention.

Chrysler argued that there was no safety need for retaining or extending the standard. In particular, they stated that they were "not aware of any safety problems or complaints from the reflection of logos or trademarks which have been made from nonmetallic materials." Chrysler concluded that "(t)he additional cost from amending FMVSS No. 107 as proposed has not been supported by a safety need and will not provide an equivalent safety benefit."

Mazda argued that the agency's proposal to expand the standard "establishes a poor precedent by establishing stricter compliance requirements without evidence that additional requirements are needed." Mazda further stated that "Data does exist showing that there have been zero claims of unsafe glare from surfaces within the view of the driver." (emphasis in original). As a result, Mazda claimed that unnecessary costs related to certification and compliance testing, quality assurance testing, and recordkeeping would be passed to the consumer. Mazda further argued that extending the standard to non-metallic components would be based on an "undefined subjective analysis" rather than data and thus would be contrary to the Motor Vehicle Safety Act. These factors led Mazda to conclude that the agency should "delete FMVSS 107 or, at the very least, retain it unchanged."

General Motors stated that there are not any data establishing a correlation between glare from non-metallic components and motor vehicle

accidents, and without such cause and effect evidence, the standard should not be expanded. Similarly, they argued that no data exist showing glare from presently unregulated components has presented a safety hazard. General Motors concluded that while "lack of evidence demonstrates current specifications are doing their job, one cannot argue that the lack of evidence justifies an expansion of the applicability of these same requirements." General Motors disagreed with the NPRM's statement that the costs necessary to comply with the extended standard would be minimal. They argued that the agency did not provide documentation and claimed that adopting the proposal would impose a substantial burden on them. In particular, General Motors stated that the amendment "would require General Motors to scrap a significant amount of tooling \* \* \* and \* \* \* redesign the affected components for approximately one-half of all General Motors vehicles [and that] [t]he costs associated with these actions would be substantial."

On the other hand, Blue Bird stated without elaboration that the proposed rule appear(s) logical and in the best interest of safety. Volkswagen stated that it would not oppose the proposed extension to non-metallic components, provided that additional components were not added to the list of regulated components. Ford generally agreed with the proposal, commenting that glare could be caused as easily by non-metallic as by metallic surfaces.

#### *B. Adequacy of Test*

Chrysler and Ford questioned whether the procedures in ASTM Standard D523-62T (June 1962), which is incorporated by reference in Standard No. 107, are objective and meet the need for motor vehicle safety. Ford noted that this standard requires use of specially prepared samples that must be flat and a minimum size. Based on the limitations in the current test, Ford commented that the standard should more closely reflect real world conditions in vehicles. Chrysler and Ford contended that the test has the following shortcomings: (1) The test is inappropriate to measure the actual gloss on non-metallic surfaces, (2) it is inappropriate to measure the gloss on components such as logos on the vehicle steering wheels that are composed of both metallic and non-metallic surfaces, (3) it is inappropriate to measure smaller components, (4) it is inappropriate to test curved or transparent components, and (5) it is inappropriate for the standard to test surrogate rather than

actual parts. These alleged deficiencies in the test led Ford to state that NHTSA must provide a test that will adequately measure these types of surfaces and that extending the requirement to non-metallic components raises unique problems.

As a result of these doubts, Chrysler requested an exception for the corporate logos because they would be difficult to measure. Similarly, General Motors noted that these emblems would be the component most affected by this rule and anticipated that 50 percent of their steering wheel pads would be in non-compliance with the new standard.

#### **III. NHTSA Determination to Terminate Rulemaking**

The agency begins its discussion of the public comments by noting that decision making regarding crash avoidance rulemaking is inherently difficult. While engineering and crash analyses can clearly demonstrate that certain vehicle improvements (e.g., better braking, better lighting) will facilitate the performance of the driver's task and thereby should improve safety, at times it is virtually impossible to isolate and quantify the individual factors leading to crashes and arrive at precise and certain conclusions about the quantified benefits that will accrue from those improvements. Accordingly, the existence or nonexistence of data or analyses linking vehicle components and performance to crash causation is not necessarily determinative of the outcome of decisions concerning crash avoidance rulemaking. Given NHTSA's duty to act in the area of crash avoidance notwithstanding an inherent measure of imprecision and uncertainty, the agency has developed and issued crash avoidance standards while attempting within its capabilities to quantify the benefits of the standards and thus limit the uncertainty. The agency emphasizes that those rulemakings depend in part on policy judgment regarding the significance of the safety problem and other factors such as the degree of difficulty in developing performance requirements and compliance test procedures.

In this rulemaking, the agency is confronted with an alleged problem which is unconfirmed by either crash causation data and analysis or consumer complaints. Further, any problem that might exist would appear to be relatively insignificant compared to the crash avoidance problems presented by other vehicle systems and components such as brake systems, lights and tires.



The agency is also confronted with a variety of criticisms regarding the test procedure. NHTSA recognizes that the sample currently used in compliance test procedure is not fully representative of the size and shape of some of the components regulated by the standard. However, the agency regards the test as an appropriate balance between representativeness on the one hand and cost and ease of testing on the other. By specifying what might be characterized as "worst case" testing, the standard seeks to ensure that all covered components, regardless of their individual peculiarities in size and/or shape, comply with the limits on glare. However, extending the standard to non-metallic components, which are apparently often smaller and more frequently curved than metallic components, might make it appropriate for the agency to develop a potentially much more complex test procedure that provides for testing of samples smaller and more curved than the currently specified samples. The development of such a test would be a costly and time consuming task.

In view of the lack of substantiation of the problem, the apparent insignificance of the problem, and the costliness of developing and using a more complex test procedure, NHTSA has determined that extending the standard is not appropriate and is therefore terminating this rulemaking. This conclusion is reinforced by resource considerations. Given the amount of resources already committed to the agency's other safety rulemaking priorities, NHTSA cannot justify the substantial additional resource commitment which would be required to extend Standard No. 107 to non-metallic components.

#### IV. Miscellaneous Issues

Commenters raised additional issues such as harmonization, leadtime, consumer preferences, the standards's applicability to original parts but not aftermarket parts, and consumer preferences. NHTSA notes that the termination of this rulemaking renders these issues moot.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

Issued on August 18, 1989.

Jeffrey R. Miller,  
Acting Administrator.

[FR Doc. 89-19851 Filed 8-22-89; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 23

#### Foreign Proposals To Amend Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of proposed amendments to appendices.

**SUMMARY:** The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animals and plants. Species for which trade is controlled are listed in Appendices I, II, and III to CITES. Any nation that is a Party to CITES may propose amendments to Appendix I or II for consideration by the other Parties.

This notice announces proposals submitted by Parties other than the United States and the Service's tentative negotiating positions, and invites information and comments on them in order to develop negotiating positions for the United States delegation. The proposals will be considered at the seventh regular meeting of the Conference of the Parties to be held in Lausanne, Switzerland from October 9-20, 1989.

**DATE:** The U.S. Fish and Wildlife Service (Service) will consider all comments received by September 22, 1989 in developing final negotiating positions. The Service plans to publish a notice of its decisions on the positions prior to the meeting of the Parties.

**ADDRESSES:** Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Department of the Interior; Washington, DC 20240. Background materials will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles W. Dane at the address given above, or telephone (703) 358-1708.

#### SUPPLEMENTARY INFORMATION:

##### Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with

extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration of meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses and the Secretariat's own findings and recommendations to all Parties no later than 30 days before the meeting. Amendments are adopted by a two-thirds majority of the Parties present and voting.

#### Information Sought

This notice announces proposals submitted by Parties other than the United States for consideration at the forthcoming meeting of the Parties, and sets forth tentative negotiating positions of the United States delegation on them. The Service solicits comments on its tentative negotiating positions and on the biological status of these species, on the amount and type of trade in specimens of these species, and on the impact of trade on the populations, especially on the survival of the species. Comments that relate this information to the criteria for adding or removing species from the Appendices would be especially helpful.

It is neither practical nor in the best interest of the United States to establish inflexible negotiating positions on proposals in advance of the meeting. The Service based the present tentative positions mainly on a review of information presented by proponents in terms of criteria adopted at previous meetings of the Conference of the Parties of CITES. Some of the proposals have had to be translated into English from Spanish or French (also official languages under CITES). Supporting statements for proposals by Japan and



Indonesia have not been submitted, although brief statements proposing certain species for the appendices have been received by the CITES Secretariat from those countries. How the Secretariat and Parties will deal with these proposals is unknown. Except for one or two species for which information comparable to the supporting statement is available the tentative negotiating position is to oppose the proposed amendment, and in fact the final position may be to oppose all proposals without supporting statements unless the best available scientific information supports the proposal.

Because information provided in many of the proposals and otherwise currently available to the Service is too incomplete to allow clear judgments about their merits, several of the tentative negotiating positions presented are likely to be revised as further biological and trade data are obtained. Final guidance for the delegation is to be based on the best available biological and trade information, including comments received in response to this notice.

#### Proposals

In accordance with the provisions of Article XV, paragraph 1(a), of the Convention; Austria, Belgium, Botswana, China, Denmark, Ethiopia,

the Federal Republic of Germany, Gambia, Guatemala, Hungary, India, Indonesia, Israel, Japan, Kenya, Madagascar, Malawi, Mozambique, Netherlands, Paraguay, Philippines, Portugal, Somalia, Sweden, Switzerland, Tanzania, Thailand, United Kingdom, Uruguay, and Zambia, all Parties to the Convention, have communicated to the Secretariat the following proposals for amendment of Appendices I and II of the Convention. These proposals will be considered at the seventh meeting of the Conference of the Parties to the Convention, to be held in Lausanne, Switzerland, from October 9-20, 1989.

A total of 75 foreign proposals on both plant and animal species were submitted of which 14 were submitted by Switzerland based on a 10-year review of the listings that was adopted at the 1981 Conference of the Parties in New Delhi, India. The proposals by Switzerland recommend the removal of those species from the Appendices that have never been reported in trade and which the chairman of the 10-year review committee believed should be considered for deletion from the Appendices, unless the species should be included in Appendix II because they are very similar in appearance to related taxa that do appear in trade.

We point out, however, that the lack of reported trade for some species

proposed for removal from the Appendices may be due to (1) their rarity, (2) the possibility that their listing in the Appendices has inhibited trade, or (3) the lack of proper documentation or reporting of trade. Consequently, the Service does not believe lack of appearance in trade is by itself a sufficient reason to warrant the removal of a taxon from the Appendices. In establishing the tentative negotiating position of these 10-year review, delisting proposals, the Service considered the degree of vulnerability of the species and the possibility of its being in trade.

Proposals by Parties other than the United States are listed in the following table. Tentative negotiating positions and the basis for them also are indicated. These positions were taken largely on the basis of the information contained in the proposal. If inadequate population and/or trade information was provided, the Service's position was usually opposed to the proposal. However, the Service was slightly more accepting of limited data and of data from other sources when considering uplisting proposals. The complete text of each proposal will be available for public inspection at the Service's Office of Scientific Authority (see address above).

| Species   | Proposed amendment   | Proponent  | Tentative U.S. position |
|---|--|--|-------------------------|
| <b>MAMMALS</b>                                      |  |  |                         |
| <b>Order Chiroptera</b>                             |  |  |                         |
| <i>Pteropus insularis</i> (Truk flying fox)         | Transfer from II to I  | Sweden   | Support (6,7).          |
| <i>Pteropus mariannus</i> (Mariana flying fox)      | do   | do   | Do.                     |
| <i>Pteropus molossinus</i> (Ponape flying fox)      | do   | do   | Do.                     |
| <i>Pteropus phaeocephalus</i> (Mortlock flying fox) | do   | do   | Do.                     |
| <i>Pteropus pilosus</i> (Large Palau flying fox)    | do   | do   | Do.                     |
| <i>Pteropus samoensis</i> (Samoan flying fox)       | do   | do   | Do.                     |
| <i>Pteropus tokudae</i> (Little Mariana flying fox) | do   | do   | Oppose (8).             |
| <i>Pteropus tonganus</i> (Insular flying fox)       | do   | do   | Oppose (9).             |
| <b>Order Carnivora</b>                              |  |  |                         |
| <i>Metursus ursinus</i> (Sloth bear)                | Add to I   | Federal Republic of Germany, India                 | Support (7).            |
| <i>Ursus americanus</i> (Black bear)                | Add to II  | Japan  | Oppose (1,14).          |
| <i>Ursus arctos</i> (Brown bear)                    | Retain populations of Afghanistan, India, Mexico, Nepal, and Pakistan in I; include all other populations in II. | China, Denmark                                     | Oppose (15).            |
| <i>Ursus arctos</i> spp. (Brown bear)               | Inclusion in II  | Japan  | Oppose (1,14).          |
| <i>Aonyx cinerea</i> (Asian small-clawed otter)     | Transfer from II to I  | India  | Support (6,7).          |
| <i>Lutra perspicillata</i> (Smooth-coated otter)    | Transfer from II to I  | India  | Do.                     |
| <i>Felis pardalis</i> (Ocelot)                      | Transfer from II to I  | Federal Republic of Germany                        | Do.                     |
| <i>Felis pardus</i> (Iberian lynx)                  | Transfer from II to I  | Federal Republic of Germany                        | Do.                     |
| <i>Felis tigris</i> (Little spotted cat)            | do   | Portugal, Federal Republic of Germany              | Do.                     |
| <i>Felis wiedii</i> (Margay)                        | do   | do   | Do.                     |
| <b>Order Proboscidea</b>                            |  |  |                         |
| <i>Loxodonta africana</i> (African elephant)        | do   | Austria, Gambia, Hungary, Kenya, Somalia, Tanzania | Do.                     |
| <b>Order Artiodactyla</b>                           |  |  |                         |
| <i>Cephalophus jentinki</i> (Jentinki's duiker)     | Transfer from II to I  | Federal Republic of Germany                        | Oppose (9).             |
| <b>BIRDS</b>  |  |  |                         |
| <b>Order Rheiformes</b>                             |  |  |                         |
| <i>Rhea americana</i> (Rhea)                        | Add to II  | Japan  | Support (1,10).         |



| Species  | Proposed amendment   | Proponent                   | Tentative U.S. position |
|--|--|-----------------------------|-------------------------|
| Order Tinamiformes   |  |                             |                         |
| <i>Rhynchotus rufescens</i> (3 ssp.) (Rufous tinamou)      | Remove from II   | Uruguay                     | Support (2,3).          |
| Order Ciconiiformes  |  |                             |                         |
| <i>Ciconia ciconia</i> (white stork)                       | Add to II  | Federal Republic of Germany | Support (10).           |
| Order Galiformes   |  |                             |                         |
| <i>Francolinus ochropectus</i> (Djibouti francolin)        | Remove from II   | Switzerland                 | Support (3,12).         |
| <i>Francolinus swierstrai</i> (Swierstra's francolin)      | do   | do                          | Do.                     |
| Order Psittaciformes                                       |  |                             |                         |
| <i>Agapornis cana</i> (Grey-headed lovebird)               | Remove from II (if accepted Madagascar has indicated that they would request inclusion on Appendix III)  | Madagascar                  | Oppose (2,9).           |
| <i>Ara maracana</i> (Illiger's macaw)                      | Transfer from II to I  | Paraguay                    | Support (2,7).          |
| <i>Amazona tucumana</i> (Tucuman Amazon)                   | do   | Denmark                     | Support (6,16).         |
| <i>Cacatua moluccensis</i> (Moluccan cockatoo)             | do   | Switzerland                 | Support (6,7).          |
| Order Coraciiformes  |  |                             |                         |
| <i>Buceros bicornis</i> (Great pied hornbill)              | Remove from I  | Switzerland                 | Support (3,12).         |
| <i>Buceros</i> spp. (Hornbills)                            | Add to II  | do                          | Support (10).           |
| <i>Buceros rhinoceros</i> (Rhinoceros hornbill)            | do   | Belgium                     | Support (10).           |
| Order Passeriformes  |  |                             |                         |
| <i>Pitta gurneyi</i> (Gurney's pitta)                      | Add to I   | Thailand                    | Support (7).            |
| <i>Pitta guajana</i> (Banded pitta)                        | Add to II  | do                          | Oppose (9).             |
| <i>Pseudochelidon sirintarae</i> (White-eyed river martin) | Add to I   | do                          | Oppose (12,17).         |
| REPTILES   |  |                             |                         |
| Order Crocodylia   |  |                             |                         |
| <i>Crocodylus niloticus</i> (Nile crocodile)               | Transfer Botswana population from I to II, pursuant to resolution Conf. 3.15 on ranching.  | Botswana                    | Support (4).            |
| <i>Crocodylus niloticus</i> (Nile crocodile)               | Transfer of the Ethiopian population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 2845.  | Ethiopia                    | Oppose (5,9).           |
| <i>Crocodylus niloticus</i> (Nile crocodile)               | Transfer Kenya's population from I to II, pursuant to resolution Conf. 3.15 on ranching.   | Kenya                       | Oppose (1,14).          |
| <i>Crocodylus niloticus</i> (Nile crocodile)               | Transfer of Madagascar's population from I to II, pursuant to resolution Conf. 3.15 on ranching.   | Madagascar                  | Oppose (18).            |
| <i>Crocodylus niloticus</i> (Nile crocodile)               | Transfer of the Malawian population from I to II, pursuant to resolution Conf. 3.15 on ranching.   | Malawi                      | Support (4).            |
| <i>Crocodylus niloticus</i> (Nile crocodile)               | Transfer of Mozambique's population from I to II, pursuant to resolution Conf. 3.15 on ranching, subject to an annual export quota of 1,000.   | Mozambique                  | Support (4,22).         |
| <i>Crocodylus niloticus</i> (Nile crocodile)               | Transfer of the Somali population from I to II subject to an annual export quota of 2000 specimens.  | Somalia                     | Oppose (5,9).           |
| <i>Crocodylus niloticus</i> (Nile crocodile)               | Maintenance of the Tanzanian population in II subject to an export quota of 3500 specimens.  | Tanzania                    | Support (5,7,22).       |
| <i>Crocodylus niloticus</i> (Nile crocodile)               | Transfer of Zambian population from I to II pursuant to resolution Conf. 3.15 on ranching.   | Zambia                      | Support (4).            |
| <i>Crocodylus porosus</i> (Saltwater crocodile)            | Proposal submitted pursuant to resolution Conf. 5.21 with export quota of 5000 specimens.  | Indonesia                   | Oppose (1,14).          |
| Order Testudinata  |  |                             |                         |
| <i>Chelonia mydas</i> (Green sea turtle)                   | Transfer from I to II; Proposal submitted pursuant to resolution Conf. 5.21; export quota of 3,000 specimens. Proposal also submitted pursuant to resolution Conf. 3.15 on ranching. | do                          | Oppose (1,14).          |
| <i>Eretmochelys imbricata</i> (Hawksbill sea turtle)       | Transfer from I to II; Proposal submitted pursuant to resolution Conf. 5.21; export quota of 3,000 specimens. Proposal also submitted pursuant to resolution Conf. 3.15 on ranching. | do                          | Oppose (1,14).          |
| Order Squamata   |  |                             |                         |
| <i>Dracaena paraguayensis</i> (Caiman lizard)              | Add to II  | Paraguay                    | Support (2,7).          |
| <i>Naja Naja</i> (Cobra)                                   | do   | India                       | Support (7).            |
| <i>Ophiophagus hannah</i> (King cobra)                     | do   | do                          | Do.                     |
| <i>Ptyas mucosus</i> (Oriental ratsnake)                   | do   | do                          | Do.                     |
| <i>Shinisaurus crocodilurus</i> (Chinese crocodile lizard) | do   | Federal Republic of Germany | Do.                     |
| <i>Varanus bengalensis</i> (Bengal Monitor)                | Transfer from I to II  | Japan                       | Oppose (1,14).          |
| <i>Varanus grayi</i> (Gray's monitor)                      | Transfer from II to I  | Federal Republic of Germany | Support (11).           |
| <i>Varanus griseus</i> (Desert monitor)                    | Transfer from I to II  | Japan                       | Oppose (1,14).          |
| FISHES (PISCES)  |  |                             |                         |
| <i>Cynolebias</i> spp. (Pearlfishes)                       | Remove from II   | Switzerland                 | Support (3,12).         |
| <i>Latimeria chalumnae</i> (Coelacanth)                    | Transfer from II to I  | Federal Republic of Germany | Support (7,11).         |
| <i>Scleropages formosus</i> (Asian bony-tongue)            | Transfer from I to II pursuant to resolution Conf. 5.21, subject to an annual export quota of 2,500 specimens.   | Indonesia                   | Oppose (1,14).          |
| Corals (CNIDARIA)  |  |                             |                         |
| Athecata spp.  | Add to II  | Israel, Philippines         | Oppose (19).            |
| Coenothecalia spp.   | do   | do                          | Do.                     |
| Scleractinia spp.  | do   | do                          | Do.                     |
| Stolonifera spp.   | do   | do                          | Do.                     |



| Species   | Proposed amendment         | Proponent                        | Tentative U.S. position |
|---|----------------------------|----------------------------------|-------------------------|
| <b>PLANTS</b>   |                            |                                  |                         |
| Family Amaryllidaceae:  |                            |                                  |                         |
| <i>Sternbergia</i> spp. (sternbergias).....   | Add to II.....             | United Kingdom.....              | Support (7).            |
| Family Apocynaceae:   |                            |                                  |                         |
| <i>Rauvolfia serpentina</i> (snake-root devil-pepper).....  | Add to II.....             | India.....                       | Support (7).            |
| Family Aristolochiaceae:  |                            |                                  |                         |
| <i>Aristolochia indica</i> (Indian birthwort).....  | Add to II.....             | do.....                          | Support (7).            |
| Family Berberidaceae:   |                            |                                  |                         |
| <i>Podophyllum hexandrum</i> (Himalayan mayapple).....  | Add to I.....              | do.....                          | Oppose (9,20).          |
| Family Droseraceae:   |                            |                                  |                         |
| <i>Drosera burmannii</i> (Burmans sundew).....  | Add to II.....             | do.....                          | Oppose (9).             |
| <i>D. indica</i> (Indian sundew).....   | do.....                    | do.....                          | Oppose (9).             |
| <i>D. peltata</i> (shield sundew).....  | do.....                    | do.....                          | Oppose (9).             |
| Family Fagaceae:  |                            |                                  |                         |
| <i>Quercus copeyensis</i> (copay oak).....  | Remove from II.....        | Switzerland.....                 | Support (3).            |
| Family Gentianaceae:  |                            |                                  |                         |
| <i>Gentiana kurroo</i> (Indian gentian).....  | Add to II.....             | India.....                       | Support (7).            |
| Family Hummiaceae:  |                            |                                  |                         |
| <i>Vantanea barbourii</i> (caracolillo).....  | Remove from I.....         | Switzerland.....                 | Support (3).            |
| Family Juglandaceae:  |                            |                                  |                         |
| <i>Oreomunnea</i> ( <i>Engelhardia</i> ) <i>pterocarpa</i> (gavil'n blanco).....                  | do.....                    | do.....                          | Oppose (3,21).          |
| Family Leguminosae (Fabaceae):  |                            |                                  |                         |
| <i>Cynometra hemitomophylla</i> (guapinol negro).....   | do.....                    | do.....                          | Support (3).            |
| <i>Platymiscium pleiostachyum</i> (cristobal).....  | do.....                    | do.....                          | Oppose (3,21).          |
| <i>Tachigali versicolor</i> (cañ fistula).....  | do.....                    | do.....                          | Oppose (3,21).          |
| Family Liliaceae:   |                            |                                  |                         |
| <i>Gloriosa superba</i> (Malabar gloriosa-lily).....  | Add to II.....             | India.....                       | Oppose (9).             |
| Family Moraceae:  |                            |                                  |                         |
| <i>Batocarpus costaricensis</i> (tojoche macho).....  | Remove from I.....         | Switzerland.....                 | Support (3).            |
| Family Orchidaceae:   |                            |                                  |                         |
| <i>Eriopsis biloba</i> (Guatemalan pop.) (bilobed eriopsis).....                                  | Transfer from II to I..... | Guatemala.....                   | Support (7).            |
| <i>Lemboglossum</i> ( <i>-Odontoglossum</i> ) <i>majale</i> (May lemboglossum).....               | do.....                    | do.....                          | Do.                     |
| <i>L. uro-skinnei</i> (Skinner's lemboglossum).....   | do.....                    | do.....                          | Do.                     |
| <i>Paphiopedilum</i> spp. (Asian tropical lady-slipper orchids).....                              | do.....                    | Netherlands.....                 | Support (7,13).         |
| <i>Phragmipedium</i> spp. (New World tropical lady-slipper orchids).....                          | do.....                    | Federal Republic of Germany..... | Support (7).            |
| <i>Rossioqlossum</i> ( <i>-Odontoglossum</i> ) <i>williamsianum</i> (Williams rossioglossum)..... | do.....                    | Guatemala.....                   | Do.                     |
| Family Podocarpaceae:   |                            |                                  |                         |
| <i>Podocarpus costalis</i> (costal podocarp).....   | Remove from I.....         | Switzerland.....                 | Support (3).            |
| Family Podophyllaceae: see Family Berberidaceae   |                            |                                  |                         |
| Family Ranunculaceae:   |                            |                                  |                         |
| <i>Aconitum dasinorrhizum</i> (then-rooted monks-hood).....                                       | Add to II.....             | India.....                       | Support (7).            |
| Family Sterculiaceae:   |                            |                                  |                         |
| <i>Pterygota</i> ( <i>-Basiloxyton</i> ) <i>excelsa</i> (castano).....                            | Remove from II.....        | Switzerland.....                 | Support (3).            |
| Family Valerianaceae:   |                            |                                  |                         |
| <i>Nardostachys grandiflora</i> (Indian nard).....  | Add to II.....             | India.....                       | Support (7).            |

The basis for the tentative U.S. position on each proposal.

(1) While this amendment to the appendices has been proposed, the CITES Secretariat has not received any supporting documentation, as of July 25, 1989.

(2) The original proposal is in French or Spanish. The Service will provide an English translation upon request.

(3) Submitted as part of the 10-year review of listings for downlisting or removal from the Appendices. The Service either supports the proposal believing the information presented to be an accurate interpretation of the likely effect of trade or opposes the proposal because the lack of reported trade for some species proposed for removal may be due to their rarity or

lack of proper documentation or reporting of trade.

(4) Transfer of certain Nile Crocodile populations from Appendix I to II pursuant to Resolution Conf. 3.15 on Ranching; some subject to annual export quotas as indicated. While the Service opposes the ranching proposals in general, the Service would support continuation of the downlisting from Appendix I to Appendix II with country by country export quotas, probably under an extension of the provisions of Conf. 5.21. The Service has several concerns about the ranching proposals. Most have inadequate biological information to support an actual downlisting, and some do not have sufficient information to justify adoption of the ranching proposal. Further, a patchwork pattern of countries with

unrestricted export (accepted with ranching proposal) or with restricted trade with quotas or without authorized commercial trade might complicate implementation.

(5) Transfer of certain Nile Crocodile and sea turtle populations from Appendix I to II pursuant to Resolution Conf. 5.21, subject to annual export quotas.

(6) The intention of this proposal is to transfer the taxon from Appendix II to I since continued trade may threaten the species with possible extinction.

(7) Listing of the taxon, as proposed, appears to be justified by information in the proposal or currently available to the Service.

(8) While this species is probably extinct, any trade is likely to be internal



to the United States and its separate listing on Appendix I does not seem warranted.

(9) The population status (i.e., degree of threat of extinction of the entire species) does not appear to warrant listing, downlisting, or delisting as proposed.

(10) Listing of this species or taxon appears justified because of the similarity of appearance of this species to others that are subject to trade.

(11) The Service would support listing this taxon in Appendix I on the basis of resolution Conf. 2.19 (i.e., due to the taxon's rarity any trade in the species would be detrimental) and trade has been documented and may increase.

(12) Available information suggests that there is little likelihood that there has been or will be any significant international trade in this species.

(13) More than half of the species in the genus are believed to be threatened with extinction. Resolution Conf. 6.19 provides for the artificially propagated hybrids to be treated as if on Appendix II. As a general matter, artificially propagated specimens of Appendix I species can be exported from the United States under a renewable export permit valid for multiple shipments during 6 months.

(14) The Service opposes this proposal until supporting documentation and additional biological and trade data become available.

(15) The listing of the taxon, as proposed, generally appears to be justified by the information in the proposal or currently available to the Service, but the proposal also transfers

the Chinese and Russian populations of *Ursus arctos pruinosus* and *U. a. isabellinus* from Appendix I to II which does not appear to be warranted.

(16) Population information is limited although the information presented in the proposal suggests a small and declining population within its restricted range. Furthermore, trade appears sufficiently large to be affecting the survival of the species.

(17) One might presume that this species is sufficiently rare to be included in Appendix I under provisions of Conf. 2.19. However, the population information presented in the proposal is not adequate to make this determination.

(18) Population and internal trade information needs to be clarified, but information available suggests that trade should be curtailed.

(19) Biological and trade information presented on individual genera is not sufficient to meet the Berne criteria. However, we recognize that enough information may become available to support the addition of some genera to Appendix II.

(20) Biological and trade information presented do not appear to support listing in Appendix I. However, enough information may become available to support listing the species in Appendix II.

(21) Submitted as part of the 10-year review of the listing for removal from the Appendices because the species is believed to be more common and/or no trade has been documented. However, the species is sufficiently rare and/or the possibility of international trade

sufficiently likely that our tentative position is to oppose complete removal from the Appendices, but to accept a downlisting of the species to Appendix II.

(22) Proposed quota consistent with quota adopted at COP6.

#### Future Actions

The next regular meeting of the Parties is scheduled to be held in Lausanne, Switzerland from October 9-20, 1989. The Service will develop final negotiating positions and announce these decisions prior to the meeting of the Parties. These negotiating positions will be based on the best available biological and trade information, taking into account comments received in response to this notice. If further information is presented at the meeting in Switzerland, the U.S. delegation will take it into account in determining whether these positions remain appropriate.

This notice was prepared by Dr. Richard M. Mitchell, Staff Zoologist, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

#### List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Dated: August 15, 1989.

John F. Turner,  
Director.

[FR Doc. 89-19847 Filed 8-22-89; 8:45 am]

BILLING CODE 4310-55-M



# Notices

Federal Register

Vol. 54, No. 162

Wednesday, August 23, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Supplement to the White Stallion Draft Environmental Impact Statement; Bitterroot National Forest, Ravalli County, MT

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare a supplement to the draft environmental impact statement.

**SUMMARY:** The Forest Service will prepare a Supplement to the White Stallion Draft Environmental Impact Statement (DEIS) that was available to the public on April 21, 1989. The supplement is being prepared because of new information regarding the purchase of adjacent private lands and the harvest of commercial timber from these lands in the next 5 years. The Draft Environmental Impact Statement disclosed effects of removing timber from the adjacent private lands at a lower amount and over a longer time period. The supplement will consider alternatives with the effects of an accelerated rate of harvest from private land as additions to the original range of alternatives in the DEIS.

**DATE:** Public comments concerning the supplement and the scope of the analysis should be submitted by September 15, 1989.

**ADDRESS:** Send written comments to District Ranger, Darby Ranger District, P.O. Box 266, Darby, MT 59829.

**FOR FURTHER INFORMATION CONTACT:** Questions about the supplement to the White Stallion DEIS should be directed to Tim Trotter, Darby Ranger District, Phone: (406) 821-3913.

**SUPPLEMENTARY INFORMATION:** The supplement will address the environmental effects of accelerated removal of timber and associated access road construction on adjacent private lands to the proposed action in the

White Stallion DEIS. The private lands are located within the area of the White Stallion DEIS in sections 1, 3 and 11, T. 3 N., R. 19 W. Approximately 800 acres of this private land is within the Sleeping Child Roadless Area (X1074).

Scoping and identification of the environmental issues for the White Stallion proposed action were disclosed in the DEIS.

One of the issues identified was what will be the effects from planned timber cutting on private lands in the area? The supplement will address this issue in light of the new information.

Public participation is welcome during the analysis for the supplement. The Forest Service is seeking information and comments from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the new information.

The DEIS Supplement is expected to be available to the public in mid-October 1989. The comment period on the supplement to the White Stallion DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register. To be most helpful, comments should be focused on the supplement. Comments received previously on the original DEIS will receive responses in the Final EIS, as will the comments to the DEIS Supplement.

The responsible official will consider the comments and responses to the DEIS and Supplement; environmental consequences discussed in the FEIS; and applicable laws, regulations, and policies in making a decision regarding the White Stallion proposal.

The responsible official will document the decision and reasons for the decision in the Record of Decision. The decision will be subject to review under applicable Forest Service Regulations.

Dated: August 5, 1989.

Bertha C. Gillam,  
Forest Supervisor, Bitterroot National Forest.  
[FR Doc. 89-19806 Filed 8-22-89; 8:45 am]  
BILLING CODE 3410-11-M

#### Vegetation Management Activities, Intermountain Region

**AGENCY:** Forest Service, USDA.

**ACTION:** Cancellation of Notice of Intent to prepare Environmental Impact Statement.

**SUMMARY:** The Department of Agriculture, Forest Service, has withdrawn its intent to prepare an Environmental Impact Statement (EIS) for a programmatic vegetation program in the Intermountain Region. As a result of scoping (public participation in developing issues) it was determined that the issues and concerns would be more appropriately considered and addressed in the NEPA Process at the site-specific analysis for each individual Forest vegetation project. The Notice of Intent, published in the Federal Register of August 4, 1988, is hereby rescinded (53 FR 293549).

The Region will continue to involve the public in the development of a Human Health Risk Assessment for selected chemicals (herbicides) suitable for vegetation management. The Risk Assessment will provide sufficient analysis to evaluate the adverse impacts of the covered chemicals on the human environment. This analysis will be used by the responsible official to make a reasoned choice among alternatives considering herbicides and other vegetative treatments at the site specific project level. There will be no programmatic decisions other than those already made at the Forest Plan level.

**FOR FURTHER INFORMATION CONTACT:** Warren Ririe, Vegetation Management Team Leader, U.S. Forest Service, 324 25th Street, Ogden, Utah 84401; telephone (801) 625-5255 or 8-586-5255.

Dated: August 9, 1989.

Clair C. Beasley,  
Deputy Regional Forester.  
[FR Doc. 89-19807 Filed 8-22-89; 8:45 am]  
BILLING CODE 3410-11-M

#### Snowbasin Land Exchange; Wasatch-Cache National Forest, Weber County, Utah; Intent To Prepare an Environmental Impact Statement; Correction

**AGENCY:** Forest Service, USDA.

**ACTION:** Final environmental impact statement scheduled completion date; correction.

**SUMMARY:** This notice corrects the date previously published in the Federal Register July 21, 1989 (54 FR 30583) for scheduled completion of the Final Environmental Impact Statement. On page 30583, in the third column on the



last line the completion date should read 1989 instead of 1990.

Dated: August 11, 1989.

Dale N. Bosworth,

Forest Supervisor.

[FR Doc. 89-19830 Filed 8-22-89; 8:45 am]

BILLING CODE 3410-11-M

### Intermountain Region; Fee Schedule for Communications Uses

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of fee schedule for communication uses.

**SUMMARY:** The Regional Forester, Intermountain Region, USDA Forest Service, is adopting a new fee schedule for communication site uses for National Forest System Lands which includes National Forest System lands in the States of Nevada, Utah, and portions of California, Colorado, Idaho, and Wyoming. The intent of the new fee schedule is to assess fees which are based on the Fair Market Value of the rights and privileges authorized, as mandated by the Federal Land Policy and Management Act, October 28, 1976.

**EFFECTIVE DATE:** September 22, 1989.

**FOR FURTHER INFORMATION CONTACT:** Frank Elder or Lynn Bidlack, Recreation and Lands Staff, Federal Building, 324 25th Street, Ogden, UT 84401, (801) 625-5150.

**SUPPLEMENTARY INFORMATION:** On July 28, 1988, the Regional Forester for the Intermountain Region published a notice of a proposed fee schedule for communications uses (53 FR No. 145, pages 28615 to 28619). The comment period for this notice was 60 days. This comment period was extended for an additional 60 days (53 FR 38759 dated October 3, 1988).

The proposed fee schedule and policy were based on categories of use with individual fees to be determined by population, number of licensed transmitter frequencies, or the nature of the use. The proposal also called for annual adjustments of the scheduled fees based upon the Consumer Price Index—Urban (CPI-U) and provided for a phase-in of fee increases. The proposal was published simultaneously with the proposals of five other Regions, who had coordinated their proposals to achieve Service-wide consistency where possible.

#### Analysis of Public Comment

The Intermountain Region received 110 written responses to the proposal. The number and percentage of comments by respondents were:

| Use categories                                     | No. of comments | Percent |
|--|-----------------|---------|
| Amateur radio.....                                 | 7               | 6       |
| Broadcast translator.....                          | 14              | 13      |
| Mobile radio; commercial communications.....       | 25              | 23      |
| Mobile radio; internal communications.....         | 13              | 12      |
| Common carrier microwave relay.....                | 4               | 4       |
| Industrial microwave.....                          | 10              | 9       |
| Natural resource and environmental monitoring..... | 3               | 2       |
| Radio broadcast.....                               | 12              | 11      |
| Television broadcast.....                          | 18              | 16      |
| Other.....   | 4               | 4       |
| Total.....   | 110             | 100     |

All of the comments received have been reviewed and given consideration in reaching the final decision. A summary of the major comments received and the Forest Service response by topic follows. It should be noted that the Intermountain Region has coordinated its review and response to the comments with the other Regions in order to achieve as much consistency Service-wide as possible.

The Forest Service has made adjustments in some of the communications site categories after review of comments and additional information which was submitted by the respondents. The revised fee schedule is responsive to industry and other concerns and is fully supported by the market data.

1. *Fee levels.* A number of respondents felt that the proposed fees are extreme and unreasonable. Many individuals and small businesses indicated that the proposed fees would be too great a burden for them and that they would have to abandon their sites if the schedule is implemented. Some suggested a re-evaluation and reduction in the proposed fees. Others recommended lower fee increases and a longer phase-in.

A few respondents said that the proposed fee rates were too low and thus amount to public subsidies. Several suggested alternative methods for determining fees, some of which would return many times the proposed rates to the Federal Government. Among alternatives proposed were: to adopt a fee policy based on site rental income (assess a percentage of gross rental income derived from the site); to consider site value in light of the alternative cost of constructing competitive towers on private lands; to base fee as a percentage of the user's investment in improvements and equipment; to use per capita income

multipliers to adjust for differences between geographical areas; and to use private management companies, with no vested interest in the site, to establish individual fees.

After analysis of these comments, the Intermountain Region has made the following changes in the proposed communications use fee schedule:

a. To be consistent with other Regions, the fees for cable and subscription television will be based upon numbers of subscribers. In most situations this method reduces the fees charged to companies whose service is to small populations and offers more stratification of fees for the mid-size companies. In the proposed schedule, fees were based on the census population within the franchise or service area. The change allows the fee to be based on actual use.

b. The same fee structure is adopted for Mobile Radio: Commercial Communications and Mobile Radio: Internal Communications. There will be a \$700 fee for the first transmitting frequency plus a \$200 fee for each additional transmitting frequency. This will result in a reduction of fees for smaller operations, but will result in a slight increase for some large operations.

There were few responses with regard to the proposed fees in the following use categories; Amateur Radio, Cellular Telephone, Common Carrier Microwave Relay, Industrial Microwave, Personal/Private "Receive Only", Natural Resource and Environmental Monitoring, and Passive Reflector. The fees as proposed in the above categories will remain the same.

2. *Market Survey.* A number of respondents felt that the market survey used to develop the proposed fee schedule was inadequate. Some indicated that the market survey and resulting fees did not give credit for enhancing public lands, used ability-to-pay rather than fair market value to determine the fees, and others felt that the survey should have included all private land leases including donated (no charge) sites, used insufficient market data, and did not correlate fees with investment values and site improvement costs. Less than 7 percent of the respondents provided data supporting their position.

The Intermountain Region coordinated with the other Forest Service Regions in reviewing and re-analyzing the market data utilized in compiling the proposed fees. No major discrepancies were found in the market data compiled by the Forest Service.



The data was found to be adequate for fee determination.

For the purposes of determining fair market value, we examined available market leases to see if the expense of developing facilities, access, and power was a factor influencing private lease rates. We found no useable correlation. The private sector leases used to establish fair market value fees do not clearly discount the site rental because of the development cost incurred by the lessee.

3. *Fee Exemption/Waivers.* Under the proposed policy, exemptions from fees and fee waivers would remain a decision of the authorized officer (36 CFR 251.57(b)). A number of respondents objected to the Forest Service policy of charging fees for communications uses on National Forest System land. Others felt that fees should be waived for any use that provides a public benefit, whether that use is of a commercial nature or not. Most respondents on this issue found the current fee waiver policy unclear, vague, and subject to inconsistent application. They requested a clear, consistent statement of a National fee waiver policy for specific categories of use. Some respondents felt that government and public agencies, as well as certain other users (utilities, public broadcasters etc.) should be exempt from fees as a matter of national policy.

We agree that there should be national fee waivers established for specific categories of use or type of holder when the entire class of use or holder meets the rental fee waiver criteria. Therefore, national direction will be issued concerning fee waivers for specific categories of use and type of holder. The direction, which follows, is intended to clarify the intent of the waiver policy; it does not contain any substantive changes in current policy.

a. *Fee exemption.* Exemptions are determinations that certain classes of users will not be required to pay an annual rental fee. Most such exemptions are statutory, i.e., they derive from specific fee exemption language in Public Law, and are not subject to the discretion of the authorized officer. However, holders may be assessed an amount sufficient to reimburse the cost of administering the use. Holders exempt from fees include:

- Federal agencies;
- Facilities established by Rural Electrification Administration financing;
- Public telecommunication systems identified and licensed as such by the Federal Communications Commission (FCC) for educational, cultural,

instructional, and institutional purposes and as described in the Communications Act of 1934, and the Federal Communications Regulations granting waiver of license fees; i.e., non-commercial educational broadcast stations as defined in part 15 CFR 2301-Public Telecommunications Facilities Program, Subpart A-Definitions, Program Purposes, and Special consideration.

b. *Fee Waiver.* Waivers are discounts or reductions from payment of the full annual rental fee, by provision of law and regulation, and at the discretion of the authorized officer. The Forest officer delegated the authority to issue the permit and establish the fee is also the officer authorized to determine if a holder qualifies for a fee waiver. Fee waivers may be full or partial, and must be equitable and in the public interest. (36 CFR 251.57(b)).

(1) *State and Local Government.* The authorized officer shall waive fees in full for telecommunications facilities and systems owned and operated by a State or local government agency or instrumentality thereof, when:

- The state or local government agencies or instrumentalities thereof do not charge the Forest Service for similar services;
- The use is not installed, maintained, or otherwise financed by means of customer charges, which include but are not limited to subscription fees, membership fees or dues, or special tax assessments, and;

The use furthers the public health, safety or welfare, or is otherwise to the benefit of the general public or the programs of the Secretary of Agriculture.

(2) *Other Holders.* Waivers for other holders will be considered by the authorized officer on a case-by-case basis. If granted, fees for other holders will not be waived below \$75, which represents the cost to the Forest Service for administration of the authorization. This rate is, however, subject to revision on the basis of change in administrative costs.

There were also a number of responses, as well as comments sent to the Chief of the Forest Service on the proposals by all Regions, which requested a review of the Forest Service's rental fee waiver policy for radio broadcast (commercial), television broadcast (commercial), and associated broadcast translators. The respondents felt that a partial or full waiver should be granted based on the public service requirements of the Communications Act of 1934 and the provisions of the

Federal Land Policy and Management Act of 1976.

As a result of these requests, the Forest Service is reviewing the National rental fee waiver policy for these categories of use. As a part of the review, the Forest Service is working with the Radio and Television Broadcasters to review the type and amount of public service provided.

Rental fees for these categories of use will remain at current levels until the review is completed and a final fee is established in the schedule. We anticipate fees for these uses will be established prior to January 1, 1990. All authorization holders and others expressing an interest in the fee schedules will be notified when the final fees are established.

4. *Categories of Use.* In the proposal, fees were based on categories of communications uses of National Forest System land. Each category was defined in the fee schedule to assure proper classification.

A number of respondents, including those for other Region's felt that the categories of uses were too narrowly defined. Various respondents urged separation of uses such as: (1) Specialized mobile radios from other uses; (2) commercial communication systems used for profit from those used for public services, and; (3) Cable TV enterprises serving major population centers from those serving sparsely populated rural areas.

After considering all comments, the categories of "Commercial Communicator" and "Internal Two-Way Radio Repeater" were changed to "Mobile Radio: Commercial Communications" and "Mobile Radio: Internal Communications. In addition, definitions for these categories were modified for clarification at the request of industry respondents. The other categories are adopted as proposed.

5. *Definitions.* Several respondents found certain definitions and terms inadequate or confusing. Industry suggested definitions and terms that more clearly define commercial communications and internal radio communication uses.

In coordination with other Regions and the Washington Office, the Intermountain Region has adopted terminology defining the various types of communication uses.

Most of the proposed definitions for the categories of use remain unchanged, or slightly modified. Modifications were in response to reviewers' comments or to improve clarity.



Slight changes were made in the following definitions (changes to improve clarity not noted):

—A definition for Natural Resource and Environmental Monitoring is provided as follows: "This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations."

—All references to appurtenant uses are eliminated from the definition of Radio and Television Broadcast. Appurtenant uses are discussed in the Forest Service Manual Supplement.

Major changes were made in the definitions of Commercial Communicator and Internal Two-way Radio. We agree with the reviewers who commented that the original definitions did not adequately describe the two categories of uses. In the final policy, the terms are defined as follows:

**Mobile Radio: Commercial Communications.** This includes communication equipment which is used to provide communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carrier two-way radio systems, and private carrier paging systems (PCPs). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

**Mobile Radio: Internal Communications.** A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

5. **Phase-in of Fee Increases.** The proposed fee schedule provided for a 3- or 5-year phased-in of fees for current holders. It was based on the percentage and amount of increase. There was concern that the phase-in did not adequately consider the financial impacts of the increases on some holders. There were examples of fees which exceeded 100 percent of the existing fee in each year of the phase-in. It was feared that the rapid increase would adversely affect the holders and their customers. As a result, the phase-in has been modified to allow a longer phase-in period.

The new phase-in will provide for a maximum increase of 25 percent of the previous year's fees with a minimum increase of \$100 per year. The number of years it takes to reach the scheduled fee will vary. However, most of the fee increases should be phase-in within 10 years. New holders and holders adding new uses are not covered by the phase-in.

7. **Implementation.** Having considered the comments the Intermountain Region is adopting the fee schedule with the changes noted in the foregoing discussion of comments. The policy and procedures to guide Forest Service employees in implementing the Communications Use Fee Schedule will be issued as a Regional Supplement to Forest Service Manual Chapter 2720. The text of the supplement is set out at the end of this notice.

The fee schedule will apply immediately to all new authorizations issued on and after the effective date of this policy. The fee schedule will be implemented for all existing special use authorizations with the billings for calendar year 1990.

Dated: May 26, 1989.

T.A. Roederer,  
Deputy Regional Forester.

#### Fee Schedule Policy and Procedures for Communication Uses

**Note:** The Forest Service uses alphanumeric codes and subject headings to organize the text of direction. Only those sections of the Forest Service Manual that would be revised are set out here. Readers should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering communication use authorizations.

#### Title 2700—Special Uses Management

##### 2720—COMMUNICATIONS

##### 2720.1—Communications Sites

##### 2. Fee Determinations

##### c. Regional Fee Schedule—

Communications use special use fees will be charged at the annual rates shown in the schedule below. These rates will apply without CPI-U adjustment for new authorizations issued during the remainder of C.Y. 1989, and with CPI-U adjustment beginning in C.Y. 1990 for all authorizations. The schedule will not affect fees which have been established through appraisal, competitive bid, negotiation, or other sound business management principles; fees for these uses will be updated in accordance with the terms of the authorization.

##### (1) Individual Authorization

#### Final Fee Schedule—Intermountain Region

##### Use Category

|                           |  |
|---------------------------|--|
| Radio Broadcast (AM & FM) |  |
| Service Area Population   |  |
| Less than 50,000.....     |  |

##### Use Category—Continued

|  |         |
|--|---------|
| 50,000 to 100,000.....   | *       |
| More than 100,000.....   | *       |
| (For AM radio, sites exceeding one acre will require a separate fee determination) |         |
| <b>Television Broadcast</b>  |         |
| Service Area Population  |         |
| Less than 50,000.....  | *       |
| 50,000 to 100,000.....   | *       |
| More than 100,000.....   | *       |
| <b>Mobile Radio: Commercial Communications</b>                                     |         |
| —First licensed transmitter frequency.....   | \$700   |
| —Each additional licensed transmitter frequency.....                               | \$200   |
| (This amount is not discounted in multiple-user situations)                        |         |
| <b>Common Carrier Microwave Relay</b>  |         |
| Service Area Population  |         |
| Less than 50,000.....  | \$1,600 |
| More than 50,000.....  | \$200   |
| <b>Passive Reflector</b> .....   | \$600   |
| <b>TV or Radio Broadcast Translators<sup>1</sup></b>                               |         |
| Service Area Population  |         |
| 0-100.....   | *       |
| 1001-2000.....   | *       |
| 2001-3000.....   | *       |
| 3001-4000.....   | *       |
| 4001-5000.....   | *       |
| 5001-6000.....   | *       |
| 6001-14,000.....   | *       |
| 14,001-50,000.....   | *       |
| Over 50,000.....   | *       |
| <b>Cable and Subscription Television</b>   |         |
| Number of Subscribers:   |         |
| Less than 200.....   | \$400   |
| 201-500.....   | \$700   |
| 501-1,500.....   | \$1,400 |
| 1,501-2,500.....   | \$2,000 |
| More than 2,500.....   | \$2,400 |
| <b>Industrial Microwave</b>  |         |
| Service Area Population  |         |
| Less than 50,000.....  | \$1,100 |
| More than 50,000.....  | \$1,500 |
| <b>Mobile Radio: Internal Communication</b>  |         |
| —First licensed transmitting frequency.....  | \$700   |
| —Each additional licensed transmitter frequency.....                               | \$200   |
| (This amount is not discounted in multiple-user permit situations)                 |         |
| <b>Miscellaneous Communication Uses</b> .....                                      | \$75    |
| Examples:  |         |
| —Personal/Private Receive-Only.....  |         |
| —Amateur Radio Service.....  |         |
| —Natural Resource & Environmental Monitoring.....                                  |         |

\* Fee of these categories of use will be established prior to 1/1/89.

<sup>1</sup> Multiple broadcast translators (frequencies) in the same facility and operated by a single FCC licensee will be considered a single use for fee calculations.

#### (2) Definitions

(a) **Amateur Radio.** Equipment used by individuals or groups who are licensed by FCC as amateur radio operators.

(b) **Broadcast Translator.** This category of use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. This category of use includes translators associated with public telecommunications service.



(c) **Cable and Subscription Television.** This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

(d) **Cellular.** This is a specialized service provided by commercial communicators which involves a mobile (vehicular) radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

(e) **Common Carrier Microwave Relay.** This use typically includes long line carriers which relay intrastate and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These uses are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

(f) **Industrial Microwave.** This use includes microwave communication equipment not regulated by state public utility commissions. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms.

(g) **Mobile Radio: Commercial Communications.** This includes communications equipment which primarily provides communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carrier two-way systems, and private carrier paging systems (PCPs). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

(h) **Mobile Radio: Internal Communications.** A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

(i) **Natural Resource and Environmental Monitoring.** This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations.

(j) **Passive Reflector.** Passive reflectors include various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

(k) **Personal/Private "Receive Only".** These include radio and TV receiving

antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, including recreation residences. These facilities are personally owned and not operated for profit.

(l) **Radio Broadcast.** This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(m) **Television Broadcast.** This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (Major and independent networks) who generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(3) **Individual Authorizations Within Facilities Owned by Others.** When shared facility occupancy is authorized and each user has an authorization, the fee shall be 100% of the fee for each authorized use. There will be no \$75 discount.

(4) **Fees under Multiple-User Authorizations.** To improve administration of communications sites, Forest Service policy encourages shared-facility occupancies under a single authorization. In these situations, the holder, rather than the Forest Service, authorizes and administers the use of the facilities by others, and serves as the facility manager.

The annual fee due from the holder of a multiple-user authorization is the total of the fees from the fee schedule for each individual use, at the full schedule value for the first use, and with a \$75 discount applied to each subsequent use. (In the case of mobile radio users with multiple frequencies, the \$75 discount applies to the base \$700 for the first frequencies; the additional frequency charge remains at \$200.

Example: Five individual uses; service area population = 38,000:

| Category of Use  | Fees if under separate permits | Fee if under one multiple-user permit |
|--|--------------------------------|---------------------------------------|
| Industrial Microwave   | \$1,100.....                   | \$1,100 (1st use @ 100%)              |
| Common Carrier Microwave                                       | 1,600.....                     | 1,525 (1600 - 75)                     |
| Mobile Radio: Commercial Communications, using 4 frequencies.. | 1,300 (700 + (200 x 3))        | 1,225 (700 - 75 + (200 x 3))          |
| Amateur.....   | 75.....                        | 0 (75 - 75)                           |

| Category of Use  | Fees if under separate permits | Fee if under one multiple-user permit |
|--|--------------------------------|---------------------------------------|
| Mobile Radio: Internal Communications (local non-profit Search & Rescue Association) | 75 (700 - 625 waiver)          | 0 (75 - 75)                           |
| Total.....   | \$4,150.....                   | \$3,850.                              |

(5) **Discounts for Consolidation and Efficient Management.** There are situations where site or facility consolidation and efficient site management is intended to meet Forest Service objectives. In these situations, fees may be temporarily discounted to reflect the benefits received by the Forest Service. Annual fee discounts cannot exceed the holder's costs or the annual fee for use of the site. The fee discounts must be considered on a case-by-case basis and approved by the Regional Forester.

Efficient site management may include the formation of user associations which assume administrative duties traditionally completed by the Forest Service.

(6) **Use of Government Owned Facilities.** In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by section 7, Act of April 24, 1950 (Granger-Thye Act) and FSM 2711.7.

(7) **Ancillary and Appurtenant Communication Uses.** Ancillary uses are those uses which provide support or intertie with another communication system on the site. The fee would be for the highest valued communications use of the holder. For example, a holder has installed a mobile radio used for internal communications which interties with an industrial microwave system in the same facility. In this case, the holder would be issued one authorization and charged a fee for industrial microwave.

Appurtenant uses are those communications uses incidental to another non-communications use of the National Forest System land, such as a ski resort or marina.

No fees will be charged for ancillary/appurtenant uses.

(8) **Phase-in of Fee Increases.** Fee increases for current holders will be phased-in at a rate of 25 percent of the previous year's fee with a minimum increase of \$100 per year. The 25 percent increase will continue until the current scheduled fee is reached.

For example: Current fee is \$300 and the scheduled fee is \$800

| Year   | Phased-in Fee         | Scheduled Fee* |
|--------|-----------------------|----------------|
| 1..... | \$400 (\$100 min.)... | \$800          |
| 2..... | 500.....              | 832            |
| 3..... | 625.....              | 865            |
| 4..... | 781.....              | 900            |
| 5..... | 936.....              | 936            |

\*Indexed using a 4 percent CPI-U



The phase-in does not apply to new holders or existing holders adding new uses.

(9) *Annual Fee Schedule Adjustment.* All communication use fees are subject to annual adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U) for July of the current year will be divided by the CPI-U for July of the previous year to yield a CPI-U multiplier which will be used to annually update the Communications Use Fee Schedule.

(10) *Other Methods of Establishing Fees.* Fees for atypical sites, or categories of use which were not established in the schedule, or sites servicing high populations, or AM radio broadcast sites exceeding 1 acre will be determined on an individual case basis.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Reviewing Appraiser to determine fees for individual sites when market evidence, such as leases for similarly used sites, demonstrate the inapplicability of the fee schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional Reviewing Appraiser establishes that the appraisal meets Forest Service appraisal standards and the report is approved.

Competitive bidding may be used to establish fees for new sites (and new development on established sites (FSM 2712.2).

(11) *Periodic Review of Fee Schedule.* The Intermountain Region shall, by December 31, 1994, review this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Fee waivers will also be reviewed at this time to ascertain holder's qualifications. Holders will be given an opportunity to provide data which might have a bearing on the review.

[FR Doc. 89-19856 Filed 8-22-89; 8:45 am]

BILLING CODE 3410-11-M

### Northern Region; Fee Schedule for Communications Uses

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; adoption of fee schedule for communications uses.

**SUMMARY:** The Regional Forester, Northern Region, Forest Service, is adopting a new fee schedule for communications uses on National Forest System land in Montana, North Dakota, part of South Dakota and north Idaho. The intent of the new fee schedule is to assess fees that are based on fair market value of the rights and privileges as mandated by the Federal Land Policy and Management Act, October 21, 1976.

**EFFECTIVE DATE:** September 22, 1989.

**FOR FURTHER INFORMATION CONTACT:** Questions about this policy should be addressed to Jim Schoenbaum or Jim Hathaway, Lands Staff, Forest Service, U.S.D.A., Federal Building, P.O. Box

7669, Missoula, Montana, 59807, (406) 329-3601 or 3110.

**SUPPLEMENTARY INFORMATION:** On July 28, 1988, the Regional Forester for the Northern Region published a notice withdrawing the Northern Region Communications Fee Schedule and announced a new proposed fee schedule for communications uses (53 FR 28606) with request for comments. By notice published in the *Federal Register* (53 FR 38759) October 3, 1988 the comment period was extended.

The proposed fee schedule and policy was based on categories of use with individual fees to be determined by population, number of licensed transmitter frequencies, number of subscribers, or the nature of the use. The proposal also called for annual adjustments of the scheduled fees based upon the Consumer Price Index—Urban (CPI-U) and provided for a phase-in of fees. The proposal was published simultaneously with the proposals by 5 other Regions, which had coordinated their proposals to achieve nation-wide consistency where possible.

### Analysis of Public Comment

The Northern Region received 52 responses to the proposal. The number and percentage of comments by respondents were:

| Use categories                                     | Number of respondents | Percent of total |
|--|-----------------------|------------------|
| Amateur radio.....                                 | 3                     | 6                |
| Broadcast translator.....                          | 1                     | 2                |
| Cable & subscription TV.....                       | 0                     | 0                |
| Cellular telephone.....                            | 0                     | 0                |
| Mobile radio; commercial communications.....       | 8                     | 15               |
| Mobile radio; internal communications.....         | 6                     | 11               |
| Common carrier microwave relay.....                | 3                     | 6                |
| Industrial microwave.....                          | 2                     | 4                |
| Natural resource and environmental monitoring..... | 0                     | 0                |
| Passive reflector.....                             | 0                     | 0                |
| Personal/private "Receive Only".....               | 1                     | 2                |
| Radio broadcast.....                               | 2                     | 4                |
| Television broadcast.....                          | 1                     | 2                |
| Other.....   | 25                    | 48               |

All of the comments received have been reviewed and given consideration in reaching the final decision. A summary of the major comments received and the Forest Service response by topic follows. It should be noted that the Northern Region has coordinated its review and response to the comments with the other Regions in order to achieve as much consistency Service-wide as possible.

1. *Fee levels.* A number of respondents felt that the proposed fees were extreme and unreasonable. Some individuals and small businesses indicated that the proposed fees would be too great a burden for them and that they would have to abandon their sites if the schedule were implemented. Some suggested a re-evaluation and reduction in the proposed fees. Others recommended lower fees and a longer phase-in period.

A few respondents said that the proposed fee rates were too low and thus amount to public subsidies. Several suggested alternative methods for determining fees, some of which would return many times the proposed rates to the Federal Government. Among alternatives proposed were: to adopt a fee policy based on site rental income (assess a percentage of gross rental income derived from the site); to consider site value in light of the alternative cost of constructing competitive towers on private lands; to base fee as a percentage of the user's investment in improvements and equipment; to use per capita income multipliers to adjust for differences between geographical areas; and to use private management companies, with no vested interest in the site, to establish individual fees. After analysis of these comments, the Northern Region is making the following changes in the proposed communication site fee schedule:

a. To be consistent with other Regions, the fees for cable and subscription television will be based on numbers of subscribers. In most situations, this method reduces the fees charged to companies who service small populations and offers more stratification of fees for the mid-size companies. In the proposed schedule, fees were based on the census population within the franchise or service area. The change allows the fee to be based on actual use.

b. The same fee structure is adopted for both Mobile Radio: Commercial Communication and Mobile Radio: Internal Communication. There will be a base fee for the first transmitting frequency plus a \$200 fee for each additional transmitting frequency. This will result in a reduction of fees for smaller operations, but will result in a slight increase for some large operations.

A few respondents also commented that proposed fees were too high in the categories of: Amateur Radio, Common Carrier Microwave Relay, Industrial Microwave, and Mobile Radio: Commercial Communications. The



claims of high fees were not supported by market data or were insufficient to warrant changing the fees in the final schedule. Therefore, the Region is adopting fees for these categories as proposed.

**2. Market Survey.** A number of respondents felt that the market survey used to develop the proposed fee schedule was inadequate. Most indicated that the market survey and resulting fees did not give credit for enhancing public lands, used ability to pay rather than fair market value to determine the fees, did not include comparable leases for the use of private land, used insufficient market data, and did not correlate fees with investment values and site improvement costs. Less than 3 percent of the respondents provided data supporting their position.

The Northern Region coordinated with the other Forest Service Regions in reviewing and re-analyzing the market data utilized in compiling the proposed fees. No major discrepancies were found in the market data compiled by the Forest Service. The data was found to be adequate for fee determination.

For the purposes of determining fair market value, we examined available market leases to see if the expense of developing facilities, access, and power was a factor influencing private lease rates. We found no useable correlation. The private sector leases used to establish fair market value do not clearly discount the site rental because of the development cost incurred by the lessee.

**3. Fee Exemption/Waivers.** Under the proposed policy, exemptions from fees and fee waivers would remain a decision of the authorizing officer (36 CFR 251.57(b)). A number of respondents objected to the Forest Service policy of charging fees for communication uses on National Forest System land. Others felt that fees should be waived for any use that provides a public benefit, whether that use is of a commercial nature or not. Most respondents to this issue found the current fee waiver policy unclear, vague, and subject to inconsistent application. They requested a clear, consistent statement of a national fee waiver policy for specific categories of use. Some respondents felt that government and public agencies, as well as certain other users (utilities, public broadcasters, etc.) should be exempt from fees as a matter of National policy.

We agree that there should be national fee waivers established for specific categories of use or type of holder when the entire class of use or holder meets the rental fee waiver criteria. Therefore, national direction

will be issued concerning fee waivers for specific categories of use and/or type of holder. The direction, which follows, is intended to clarify the intent of the waiver policy, it does not contain any substantive changes in current policy.

**a. Fee exemption.** Exemptions are determinations that certain classes of users will not be required to pay an annual rental fee. Most such exemptions are statutory; i.e., they derive from specific fee exemption language in Public Law, and are not subject to the discretion of the authorized officer. However, holders may be assessed an amount sufficient to reimburse the cost of administering the use. Holders exempt from fees include:

- Federal agencies
- Facilities established by Rural Electrification Administration
- Public telecommunication systems identified and licensed as such by the Federal Communications Commission (FCC) for educational, cultural, instructional, and institutional purposes, and as described in the Communications Act of 1934, and the Federal Communications Regulations granting waiver of license fees; i.e., non-commercial educational broadcast stations as defined in 15 CFR part 2301—Public Telecommunications Facilities Program, Subpart A-Definitions, Program Purposes, and Special consideration.

**b. Fee Waiver.** Waivers are discounts or reductions from payment of the full annual rental fee, by provisions of law and regulation, and at the discretion of the authorized officer. The Forest Officer delegated the authority to issue the permit and establish the fee is also the officer authorized to determine if a holder qualifies for a fee waiver. Fee waivers must be equitable and in the public interest (36 CFR 251.57(b)).

(1) State and Local Government. The authorized officer shall waive fees for telecommunication facilities and systems owned and operated by a State or local government agency or instrumentality thereof, when:

- State or local government or instrumentalities thereof do not charge the Forest Service for similar services.
- The use is not installed, maintained, or otherwise financed by means of customer charges, which include but are not limited to subscription fees, membership fees or dues, or special tax assessments; and
- The use furthers the public health, safety, or welfare, or is otherwise to the benefit of the general public or the

programs of the Secretary of Agriculture.

(2) Other Holders. Waivers for other holders will be considered by the authorized officer on a case by case basis. If granted, fees will not be waived below \$75, which currently represents the cost to the Forest Service for administration of the authorization. This rate is, however, subject to revision on the basis of change in administrative costs.

There were also a number of responses, as well as comments sent to the Chief of the Forest Service on the proposals by all Regions, which requested a review of the Forest Service's rental fee waiver policy for radio broadcast (commercial), television broadcast (commercial) and associated broadcast translators. The respondents felt that a partial or full waiver should be granted based on the public service requirements of the Communications Act of 1934 and the provisions of the Federal Land Policy and Management Act of 1976.

As a result of these requests, the Forest Service is reviewing the National rental fee waiver policy for these categories of use. As a part of the review, the Forest Service is working with the Radio and Television Broadcasters to review the type and amount of public service provided.

Rental fees for these categories of use will remain at current levels until the review is completed and a final fee is established in the schedule. We anticipate fees for these uses will be established prior to January 1, 1990. All authorization holders and others expressing an interest in the fee schedules will be notified when the final fees are established.

**4. Categories of Use.** In the proposal, fees were based on categories of communication uses on National Forest System land. Each category was defined in the fee schedule to ensure proper classification.

A number of respondents felt that the categories of uses were too narrowly defined. Some respondents urged separation of uses such as: (1) Specialized mobile radios from other uses, (2) commercial communication systems used for profit from those used for public services, and (3) TV cable enterprises serving major population centers from those serving sparsely populated rural areas.

After considering comments, the categories of "Commercial Communicator" and "Internal Two-Way Radio" in the proposal have been changed to "Mobile Radio: Commercial Communications" and "Mobile Radio:



Internal Communications". In addition, definitions for these categories have been modified for clarification at the request of industry respondents. The other categories are adopted as proposed.

5. *Definitions.* Several respondents found certain definitions and terms inadequate or confusing. Industry suggested definitions and terms that more clearly define commercial communications and internal radio communication uses.

In coordination with other Regions and the Washington Office, the Northern Region has adopted common terminology defining the various types of communication uses.

Most of the proposed definitions for the categories of use remain unchanged or slightly modified. Modifications were in response to reviewers comments or to improve clarity.

Slight changes were made in the following definitions (changes to improve clarity not noted):

—A definition for Natural Resource and Environmental Monitoring is provided as follows: "This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations."

—All references to appurtenant uses are eliminated from the definition of Radio and Television Broadcast.

Appurtenant uses are discussed in the Forest Service manual supplement.

Major changes were made in the definitions of Commercial Communicator and Internal Two-Way Radio. We agree with the reviewers who commented that the original definitions did not adequately describe the two categories of uses. In the final policy, the terms are defined as follows:

**Mobile Radio: Commercial Communications.** This includes communication equipment which is used to provide communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMR's), private carrier two-way radio systems, and private carrier paging systems (PCPS). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

**Mobile Radio: Internal Communications.** A private mobile radio

system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

6. *Phase-in of Fee Increases.* The proposed fee schedule provided for a 3 or 5 year phase-in of fees for current holders. It was based on the percentage and amount of increase. There was concern that the phase-in did not adequately consider the financial impacts of the increases on some holders. There were examples of fees which exceeded 100 percent of the existing fee in each year of the phase-in. It was feared that the rapid increase would adversely affect the holders and their customers. As a result, the phase-in has been modified to allow a longer phase-in period.

The new phase-in will provide for a maximum increase of 25 percent of the previous year's fees with a minimum increase of \$100 per year. The number of years it takes to reach the scheduled fee will vary. However, most of the fee increases should be phased-in within 10 years. New holders and holders adding new uses are not covered by the phase-in.

7. *Implementation.* Having considered the comments received, the Northern Region is adopting the fee schedule with the changes noted in the foregoing discussion of comments. The policy and procedures to guide Forest Service employees in implementing the Communications Use Fee Schedule will be issued as a Regional Supplement to Forest Service Manual Chapter 2720. The text of the supplement is set out at the end of this notice.

The fee schedule will apply immediately to all new permits issued on and after the effective date of this policy. The fee schedule will be implemented for all existing special use authorizations with the billings for calendar year 1990.

Dated: May 24, 1989.

John W. Mumma,  
Regional Forester.

#### Fee Schedule Policy and Procedures for Communications Uses

**Note:** The Forest Service uses alphanumeric codes and subject headings to organize the text of direction. Only those sections of the Forest Service Manual that would be revised are set out here. Readers should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering communication use authorizations.

#### Title 2700—Special Uses Management

##### 2720—Communications

##### 2720.1—Communications Sites

##### 2. Fee Determinations.

##### c. Regional Fee Schedule—

Communications use special use fees will be charged at the annual rates shown in the schedule below. These rates will apply without CPI—U adjustment for new authorizations issued during the remainder of C.Y. 1989, and with CPI—U adjustment in C.Y. 1990 for all authorizations. The schedule will not affect fee which have been established through appraisal, competitive bid, negotiation, or other sound business management principles; fees for these uses will be updated in accordance with the terms of the authorization.

##### (1) Individual Authorization

#### Final Fee Schedule—Northern Region

| Use Category   | Fee     |
|--|---------|
| Radio Broadcast (AM & FM) Service Area Population..... | *       |
| (Not applicable for AM radio sites over one acre)      | *       |
| Television Broadcast Service Area Population.....      | *       |
| Broadcast Translator.....                              | *       |
| Cable and Subscription TV Number of subscribers:       |         |
| Less than 200.....                                     | \$400   |
| 201-500.....   | \$700   |
| 501-1,500.....   | \$1,400 |
| 1,501-2,500.....                                       | \$2,000 |
| More than 2,500.....                                   | \$2,400 |
| Common Carrier Microwave                               |         |
| Relay.....   | \$1,500 |
| Industrial Microwave.....                              | \$1,000 |
| Mobile Radio:  |         |
| Commercial Communication                               |         |
| First licensed transmitter frequency.....              | \$700   |
| Each additional licensed transmitter frequency.....    | \$200   |
| Mobile Radio:  |         |
| Internal Communications                                |         |
| First licensed transmitter frequency.....              | \$500   |
| Each additional licensed transmitter frequency.....    | \$200   |
| Cellular   |         |
| Passive Reflector.....                                 | \$500   |
| Amateur Radio.....                                     | \$75    |
| Personal/Private "Receive Only".....                   | \$75    |
| Natural Resource and Environmental Monitoring.....     | \$75    |

\* Fees of these categories of use will be established prior to 1/1/90.

##### (2) Definitions

(a) **Amateur Radio.** Equipment used by individuals or groups who are Licensed by FCC as amateur radio operators.

(b) **Broadcast Translator.** This category of use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. This category of use includes translators associated with public telecommunications service.

(c) **Cable and Subscription Television.** This category includes cable TV head-end antenna



or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

(d) *Cellular*. This is a specialized service provided by commercial communications which involves a mobile (vehicular) radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

(e) *Common Carrier Microwave Relay*. This use typically includes long line carriers which relay intrastate and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These uses are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

(f) *Industrial Microwave*. This use includes microwave communication equipment not regulated by state public utility commissions. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms.

(g) *Mobile Radio: Commercial Communications*. This includes communications equipment which primarily provides communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carriers two-way systems, and private carriers paging systems (PCPs). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

(h) *Mobile Radio: Internal Communications*. A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

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(j) *Passive Reflector*. Passive reflectors include various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

(k) *Personal/Private "Receive Only"*. These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the

reception of electronic signals, serving private homes, including recreation residences. These facilities are personally owned and not operated for profit.

(l) *Radio Broadcast*. This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(m) *Television Broadcast*. This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (Major and independent networks) who generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

#### (3) *Individual Authorizations Within Facilities Owned by Others*

When shared facility occupancy is authorized and each user has an authorization, the fee shall be 100% of the fee for each authorized use. There will be no \$75 discount.

#### (4) *Fees under Multiple-User Authorizations*

To improve administration of communications sites, Forest Service policy provides for authorizing shared facility occupancies under a single authorization. By the terms and conditions, these authorization holders, rather than the Forest Service, authorize and administer the use of their facilities by others. Collection of Forest Service fees required under this type of authorization, are burdens of the holder.

Fees for such a multiple-user authorization: First use = 100% of fee schedule

All other uses are subject to a \$75 discount, except for additional frequencies in the case of mobile radios. These additional frequencies are charged the full rate per the following example:

Mobile radio use will be \$700 as listed in the schedule for first frequency (less \$75 discount) plus \$200 for each additional frequency.

#### (5) *Discounts for Consolidation and Efficient Management*

There are situations where site or facility consolidation and efficient site management is intended to meet Forest Service objectives. In these situations, fees may be temporarily discounted to reflect the benefits received by the Forest Service. Annual fee discounts cannot exceed the holders' costs or the annual fee for use of the site. The fee discounts must be considered on a case-by-case basis and approved by the Regional Forester in advance.

Efficient site management may include the formation of user associations which assume administrative duties traditionally completed by the Forest Service

#### (6) *Use of Government Owned Facilities*

In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by Section 7, Act of April 24, 1950 (Granger-Thye and FSM 2711.7).

#### (7) *Ancillary and Appurtenant Communication Uses*

Ancillary uses are those uses which provide support or intertie with another communication system on the site. The fee would be calculated based on the highest value of the uses. For example, a holder has installed a mobile radio used for internal communications which interties with an industrial microwave system in the same facility. In this case, the holder would be issued one authorization and charged a fee for Industrial Microwave.

Appurtenant uses are those communication uses incidental to another non-communication use of the National Forest System land, such as a ski resort or marina.

No fees will be charged for ancillary/appurtenant uses.

#### (8) *Phase-in of Fee Increases*

Fee increases for current holders will be phased-in at a rate of 25 percent of the previous year's fee with a minimum increase of \$100 per year. The 25 percent increase will continue until the current scheduled fee is reached.

For example: Current fee is \$300 and the scheduled fee is \$800

|       | Phased-in Fee      | Scheduled Fee* |
|-------|--------------------|----------------|
| Year: |                    |                |
| 1     | \$400 (\$100 min.) | \$800          |
| 2     | 500                | 832            |
| 3     | 625                | 865            |
| 4     | 781                | 900            |
| 5     | 936                | 936            |

\*Indexed using a 4 percent CPI-U.

The phase-in does not apply to new holders or existing holders adding new uses.

#### (9) *Annual Fee Schedule Adjustment*

All communication use fees are subject to annual adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U) for July of the current year will be divided by the CPI-U for July of the previous year to yield a CPI-U multiplier which will be used to annually update the Communications Use Fee Schedule.

#### (10) *Periodic Review of Fee Schedule*

The Northern Region shall, by December 31, 1994, reviews this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Fee waivers will also be reviewed at this time to ascertain holder's qualifications. Holders will be given an opportunity to provide data which might have a bearing on the review.

#### (11) *Other Methods of Establishing Fees*

Fees for atypical sites, for categories of use which were not established in the schedule, for sites servicing high populations, or AM radio broadcast sites exceeding 1 acre will be determined on an individual case basis.



The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Reviewing Appraiser to determine fees for new categories of use or individual sites when market evidence, such as leases for similarly used sites, demonstrates the inapplicability of the fee schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional reviewing Appraiser establishes that the appraisal meets Forest Service appraisal standards and the report is approved.

Competitive bidding may be used to establish fees for new sites, (FSM 2712.2).

[FR Doc. 89-19857 Filed 8-22-89; 8:45 am]

BILLING CODE 3410-11-M

### Rocky Mountain Region; Fee Schedule for Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of fee schedule for communications uses.

**SUMMARY:** The Regional Forester, Rocky Mountain Region, Forest Service, is adopting a new fee schedule for communications uses on National Forest System land in the states of Colorado, Kansas, Nebraska, South Dakota and Wyoming. The intent of the new fee schedule is to assess fees that are based on fair market value of the rights and privileges as mandated by the Federal Land Policy and Management Act, October 21, 1976.

**EFFECTIVE DATE:** September 22, 1989.

**FOR FURTHER INFORMATION CONTACT:** Questions about this policy should be addressed to Ben Wallingford, Lands Staff, Forest Service, Rocky Mountain Region, 11177 West 8th Ave., Box 25127, Lakewood, CO 80225, (303) 236-9511.

**SUPPLEMENTARY INFORMATION:** On July 28, 1988, the Regional Forester for the Rocky Mountain Region published a notice of a proposed fee schedule for communications uses (53 FR 28026) with request for comment. By notice published in the Federal Register (53 FR 38759) October 3, 1988 the comment period was extended.

The proposed fee schedule and policy was based on categories of use with individual fees to be determined by population, number of licensed transmitter frequencies, number of subscribers, or the nature of the use. The proposal also called for annual adjustments of the scheduled fees based upon the Consumer Price Index—Urban (CPI-U) and provided for a phase-in of fees. The proposal was published simultaneously with the proposals by 5 other Regions, who had coordinated

their proposals to achieve nation wide consistency where possible.

### Analysis of Public Comment

The Rocky Mountain Region received 82 responses to the proposal. The number and percentage of comments by respondents were:

| Use categories                          | No. of respondents | Percent of total |
|---|--------------------|------------------|
| Amateur Radio                           | 5                  | 6                |
| Broadcast Translator                    | 7                  | 9                |
| Mobile Radio; Commercial Communications | 14                 | 17               |
| Mobile Radio; Internal Communications   | 36                 | 43               |
| Common Carrier Microwave Relay          | 3                  | 4                |
| Industrial Microwave                    | 1                  | 1                |
| Radio Broadcast                         | 7                  | 9                |
| Television Broadcast                    | 7                  | 9                |
| Other                                   | 2                  | 2                |

All of the comments received have been reviewed and given consideration in reaching the final decision. A summary of the major comments received and the Forest Service response by topic follows. It should be noted that the Rocky Mountain Region has coordinated its review and response to the comments with the other Regions in order to achieve as much consistency Service wide as possible.

**1. Fees levels.** A number of respondents felt that the proposed fees were extreme and unreasonable. Many individuals and small businesses indicated that the proposed fees would be too great a burden for them and that they would have to abandon their sites if the schedule were implemented. Some suggested a re-evaluation and reduction in the proposed fees. Others recommended lower fees and a longer phase-in period.

A few respondents said that the proposed fee rates were too low and thus amount to public subsidies. Several suggested alternative methods for determining fees, some of which would return many times the proposed rates to the Federal Government. Among alternatives proposed were: to adopt a fee policy based on site rental income (assess a percentage of gross rental income derived from the site); to consider site value in light of the alternative cost of constructing competitive towers on private lands; to base fee as a percentage of the user's investment in improvements and equipment; to use per capita income multipliers to adjust for differences between geographical areas; and to use private management companies, with no vested interest in the site, to establish individual fees.

After analysis of these comments, the Rocky Mountain Region is making the following changes in the proposed communications use fee schedule:

a. To be consistent with other Regions, the fees for cable and subscription television will be based on a different stratification of numbers of subscribers. In most situations, this method reduces the fees charged to companies who service small populations and offers more stratification of fees for the mid-size companies. In the proposed schedule, fees were based on the census population within the franchise or service area. The change allows the fee to be based on actual use.

b. The same fee structure is adopted for both Mobile Radio: Commercial Communication and Mobile Radio: Internal Communication. There will be a base fee for the first transmitting frequency plus a \$200 fee for each additional transmitting frequency. This will result in a reduction of fees for smaller operations, but will result in a slight increase for some large operations.

A few respondents also commented that proposed fees were too high in the categories of: Amateur Radio, Common Carrier Microwave Relay, Industrial Microwave, and Mobile Radio: Commercial Communications. The claims of high fees were not supported by market data or was insufficient to warrant changing the fees in the final schedule. Therefore the Region is adopting fees for these categories as proposed.

**2. Market Survey.** A number of respondents felt that the market survey used to develop the proposed fee schedule was inadequate. Most indicated that the market survey and resulting fees did not give credit for enhancing public lands, used ability to pay rather than fair market value to determine the fees, did not include comparable leases for the use of private land, used insufficient market data, and did not correlate fees with investment values and site improvement costs. Less than 8 percent of the respondents provided data supporting their position.

The Rocky Mountain Region coordinated with the other Forest Service Regions in reviewing and re-analyzing the market data utilized in compiling the proposed fees. No major discrepancies were found in the market data compiled by the Forest Service. The data was found to be adequate for fee determination.

For the purposes of determining fair market value, we examined available market leases to see if the expense of



developing facilities, access, and power was a factor influencing private lease rates. We found no useable correlation. The private sector leases used to establish fair market value do not clearly discount the site rental because of the development cost incurred by the lessee.

3. *Fee Exemption/Waivers.* Under the proposed policy, exemptions from fees and fee waivers would remain a decision of the authorized officer (36 CFR 251.57(b)). A number of respondents objected to the Forest Service policy of charging fees for communication uses on National Forest System land. Others felt that fees should be waived for any use that provides a public benefit, whether that use is of a commercial nature or not. Most respondents to this issue found the current fee waiver policy unclear, vague, and subject to inconsistent application. They requested a clear, consistent statement of a national fee waiver policy for specific categories of use. Some respondents felt that government and public agencies, as well as certain other users (utilities, public broadcasters, etc.) should be exempt from fees as a matter of National policy.

We agree that there should be national fee waivers established for specific categories of use or type of holder when the entire class of use or holder meets the rental fee waiver criteria. Therefore, national direction will be issued concerning fee waivers for specific categories of use and/or type of holder. The direction, which follows, is intended to clarify the intent of the waiver policy, it does not contain any substantive changes in current policy.

a. *Fee exemption*—Exemptions are determinations that certain classes of users will not be required to pay an annual rental fee. Most such exemptions are statutory; i.e., they derive from specific fee exemption language in Public Law, and are not subject to the discretion of the authorized officer. However, holders may be assessed an amount sufficient to reimburse the cost of administering the use. Holders exempt from fee include:

- Federal agencies
- Facilities established by Rural Electrification Administration
- Public telecommunication systems identified and licensed as such by the Federal Communications Commission (FCC) for educational, cultural, instructional, and institutional purposes, and as described in the Communications Act of 1934, and the Federal Communications Regulations granting waiver of license fees; i.e.,

non-commercial educational broadcast stations as defined in 15 CFR part 2301—Public Telecommunications Facilities Program, Subpart A—Definitions, Program Purposes, and Special consideration.

b. *Fee Waiver*—Waivers are discounts or reductions from payment of the full annual rental fee, by provisions of law and regulation, and at the discretion of the authorized officer. The Forest officer delegated the authority to issue the permit and establish the fee is also the officer authorized to determine if a holder qualifies for a fee waiver. Fee waivers must be equitable and in the public interest (36 CFR 251.47(b)).

(1) *State and Local Government.* The authorized officer shall waive fees in full for telecommunication facilities and systems owned and operated by a State or local government agency or instrumentality thereof, when:

- State or local government or instrumentalities thereof do not charge the Forest Service for similar services; and
- The use is not installed, maintained, or otherwise financed by means of customer charges, which include but are not limited to subscription fees, membership fees or dues, or special tax assessments; and
- The use furthers the public health, safety, or welfare, or is otherwise to the benefit of the general public or the programs of the Secretary of Agriculture.

(2) *Other Holders.* Waivers for other holders will be considered by the authorized officer on a case by case basis. If granted, fees will not be waived below \$75, which currently represents the cost to the Forest Service for administration of the authorization. This rate is, however, subject to revision on the basis of change in administrative costs.

There were also a number of responses, as well as comments sent to the chief of the Forest Service on the proposals by all Regions, which requested a review of the Forest Service's rental fee waiver policy for radio broadcast (commercial), television broadcast (commercial) and associated broadcast translators. The respondents felt that a partial or full waiver should be granted based on the public service requirements of the Communications Act of 1934 and the provisions of the Federal Land Policy and Management Act of 1976.

As a result of these requests, the Forest Service is reviewing the national rental fee waiver policy for these categories of use. As a part of the

review, the Forest Service is working with the Radio and Television Broadcasters to review the type and amount of public service provided.

Rental fees for these categories of use will remain at current levels until the review is completed and a final fee is established in the schedule. We anticipate fees for these uses will be established prior to January 1, 1990. All authorization holders and others expressing an interest in the fee schedules will be notified when the final fees are established.

4. *Categories of Use.* In the proposal, fees were based on categories of communications uses on National Forest System land. Each category was defined in the fee schedule to ensure proper classification.

A number of respondents felt that the categories of uses were too narrowly defined. Some respondents urged separation of uses such as: (1) Specialized mobile radios from other uses, (2) commercial communication systems used for profit from those used for public services, and (3) TV cable enterprises serving major population centers from those serving sparsely populated rural areas.

After considering comments, the categories of "Commercial Communicator" and "Internal Two-Way Radio" in the proposal have been changed to "Mobile Radio: Commercial Communications" and "Mobile Radio: Internal Communications". In addition, definitions for these categories have been modified for clarification at the request of industry respondents. The other categories are adopted as proposed.

To maintain consistency between the Regions, internal microwave has been changed to industrial microwave.

5. *Phase-in of Fee Increases.* The proposed fee schedule provided for a 3 or 5 year phase-in of fees for current holders. It was based on the percentage and amount of increase. There was concern that the phase-in did not adequately consider the financial impacts of the increase on some holders. There were examples of fees which exceeded 100 percent of the existing fee in each year of the phase-in. It was feared that the rapid increase would adversely affect the holders and their customers. As a result, the phase-in has been modified to allow a longer phase-in period.

The new phase-in will provide for a maximum increase of 25 percent of the previous year's fees with a minimum increase of \$100 per year. The number of years it takes to reach the scheduled fee will vary. However, most of the fee



increases should be phased-in within 10 years. New holders and holders adding new uses are not covered by the phase-in.

6. *Definitions.* Several respondents found certain definitions and terms inadequate or confusing. Industry suggested definitions and terms that more clearly define commercial communications and internal radio communication uses.

In coordination with other Regions and the Washington Office, the Rocky Mountain Region has adopted common terminology defining the various types of communications uses.

Most of the proposed definitions for the categories of use remain unchanged or slightly modified. Modifications were in response to reviewers comments or to improve clarity.

Slight changes were made in the following definitions (changes to improve clarity not noted):

—A definition for Natural Resource and Environmental Monitoring is provided as follows: "This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations."

—All references to appurtenant uses are eliminated from the definition of Radio and Television Broadcast. Appurtenant uses are discussed in the Forest Service manual supplement.

Major changes were made in the definitions of Commercial Communicator and Internal Two-Way Radio. We agree with the reviewers who commented that the original definitions did not adequately describe the two categories of uses. In the final policy, the terms are defined as follows:

**Mobile Radio: Commercial Communications.** This includes communication equipment which is used to provide communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Example of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMR's), private carrier two-way radio systems, and private carrier paging system (PCPS). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

**Mobile Radio: Internal Communications.** A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of

internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

6. *Implementation.* Having considered the comments received, the Rocky Mountain Region is adopting the fee schedule with the changes noted in the foregoing discussion of comments. The policy and procedures to guide Forest Service employees in implementing the Communications Use Fee Schedule will be issued as a Regional Supplement to Forest Service Manual Chapter 2720. The text of the supplement is set out at the end of this notice.

The fee schedule will apply immediately to all new permits issued on and after the effective date of this policy. The fee schedule will be implemented for all existing special use authorizations with the billings for calendar year 1990.

Dated: May 18, 1989.

Sidney H. Hanks,

Deputy Regional Forester.

#### Fee Schedule Policy and Procedures for communications uses

(Note: The Forest Service uses alphanumeric codes and subject headings to organize the text of direction. Only those sections of the Forest Service Manual that would be revised are set out here. Readers should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering communication use authorizations.)

#### Title 2700—Special Uses Management

#### 2728—COMMUNICATIONS

#### 2728.1—Communications Sites

#### 2. Fee Determinations

#### c. Regional Fee Schedule—

Communications use special use fees will be charged at the annual rates shown in the schedule below. These rates will apply without CPI-U adjustment for new authorizations issued during the remainder of C.Y. 1989, and with CPI-U adjustment beginning in C.Y. 1990 for other authorizations. The schedule will not affect fees which have been established through appraisal, competitive bid, negotiation, or other sound business management principles; fees for these uses will be updated in accordance with terms of the authorization.

#### (1) Individual Authorization

#### Final Fee Schedule—Rocky Mountain Region

| Use Category  | Fee Schedule |
|---|--------------|
| Radio Broadcast (AM & FM) Service Area Population ..... | *            |

#### Final Fee Schedule—Rocky Mountain Region—Continued

| Use Category   | Fee Schedule |
|--|--------------|
| (Not applicable for AM radio sites over one acre)    |              |
| Television Broadcast Service Area Population .....   | *            |
| Broadcast Translator .....                           | *            |
| <i>Cable and Subscription TV</i>                     |              |
| Number of subscribers:                               |              |
| Less than 200 .....                                  | \$400        |
| 201-500 .....  | \$700        |
| 501-1,500 .....                                      | \$1,400      |
| 1,501-2,500 .....                                    | \$2,000      |
| More than 2,500 .....                                | \$2,400      |
| Common Carrier Microwave Relay .....                 | \$1,500      |
| Industrial Microwave .....                           | \$1,000      |
| <i>Mobile Radio:</i>                                 |              |
| <i>Commercial Communication</i>                      |              |
| First licensed transmitter frequency .....           | \$700        |
| Each additional licensed transmitter frequency ..... | \$200        |
| <i>Mobile Radio:</i>                                 |              |
| <i>Internal Communications</i>                       |              |
| First licensed transmitter frequency .....           | \$700        |
| Each additional licensed transmitter frequency ..... | \$200        |
| Passive Reflector .....                              | \$500        |
| Amateur Radio .....                                  | \$75         |
| Personal/Private "Receive Only" .....                | \$75         |
| Natural Resource and Environmental Monitoring .....  | \$75         |

\* Fees of these categories of use will be established prior to 1/1/90.

#### (2) Definitions

(a) *Amateur Radio.* Equipment used by individuals or groups who are Licensed by FCC as amateur radio operators.

(b) *Broadcast Translator.* This category of use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. This category of use includes translators associated with public telecommunications service.

(c) *Cable and Subscription Television.* This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

(d) *Cellular.* This is a specialized service provided by commercial communicators which involves a mobile (vehicular) radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

(e) *Common Carrier Microwave Relay.* This use typically includes long line carriers which relay intrastate and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These uses are regulated by state public utility commissions



and must provide services to any consumer with the ability to pay according to published rate schedules.

(f) *Industrial Microwave*. This use includes microwave communication equipment not regulated by state public utility commissions. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms.

(g) *Mobile Radio: Commercial Communications*. This includes communications equipment which primary provides communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carrier two-way systems, and private carrier paging systems (PCPs). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

(h) *Mobile Radio: Internal Communications*. A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

(i) *Natural Resources and Environmental Monitoring*. This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations.

(j) *Passive Reflector*. Passive reflectors include various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

(k) *Personal/Private "Receive Only"*.

These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, including recreation residences. These facilities are personally owned and not operated for profit.

(l) *Radio Broadcast*. This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(m) *Television Broadcast*. This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (Major and independent networks) who generate income

through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

#### (3) *Individual Authorizations Within Facilities Owned by Others*

When shared facility occupancy is authorized and each user has an authorization, the fee shall be 100% of the fee for each authorized use. There will be no \$75 discount.

#### (4) *Fees under Multiple-User Authorizations*

To improve administration of communications sites, Forest Service policy provides for authorizing shared facility occupancies under a single authorization. By the terms and conditions, these authorization holders, rather than the Forest Service, authorize and administer the use of their facilities by others. Collection of Forest Service fees required under this type of authorization, are burdens of the holder.

Fees for such a multiple-user authorization: First use = 100% of fee schedule

All other uses are subject to a \$75 discount, except for additional frequencies in the case of mobile radios. These additional frequencies are charged the full rate per the following example:

Mobile radio use will be \$300 to \$2,000 as listed in the schedule for first frequency (less \$75 discount) plus \$200 for each additional frequency.

#### (5) *Discounts for Consolidation and Efficient Management*

There are situations where site or facility consolidation and efficient site management is intended to meet Forest Service objectives. In these situations, fees may be temporarily discounted to reflect the benefits received by the Forest Service. Annual fee discounts cannot exceed the holder costs or the annual fee for use of the site. The fee discounts must be considered on a case-by-case basis and approved by the Regional Forester.

Efficient site management may include the formation of user associations which assume administrative duties traditionally completed by the Forest Service.

#### (6) *Use of Government Owned Facilities*

In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by section 7, Act of April 24, 1950 (Granger-Thye and FSM 2711.7).

#### (7) *Ancillary and Appurtenant Communication Users*

Ancillary uses are those uses which provide support or intertie with another communication system on the site. The fee would be for the highest valued communication use of the holder. For example, a holder has installed a mobile radio used for internal communications which interties with an industrial microwave system in the same facility. In this case the holder would be issued one authorization and charged a fee for industrial microwave.

Appurtenant uses are those communication uses incidental to another non-communication use of the National Forest System land, such as a ski resort or marina.

No fees will be charged for ancillary/appurtenant uses.

#### (8) *Phase-in of Fee Increases*

Fee increases for current holders will be phased-in at a rate of 25 percent of the previous year's fee with a minimum increase of \$100 per year. The 25 percent increase will continue until the current scheduled fee is reached.

For example: Current fee is \$300 and the scheduled fee is \$800

|             | Phased-in fee | Scheduled fee* |
|-------------|---------------|----------------|
| Year 1..... | \$400         | \$800          |
| Year 2..... | 500           | 832            |
| Year 3..... | 625           | 865            |
| Year 4..... | 781           | 900            |
| Year 5..... | 936           | 936            |

\*Indexed using a 4 percent CPI-U.

† \$100 min.

The phase-in does not apply to new holders or existing holders adding new uses.

#### (9) *Annual Fee Schedule Adjustment*

All communication use fees are subject to annual adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U) for July of the current year will be divided by the CPI-U for July of the previous year to yield a CPI-U multiplier which will be used to annually update the Communications Use Fee Schedule.

#### (10) *Periodic Review of Fee Schedule*

The Rocky Mountain Region shall, by December 31, 1993, review this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Fee waivers will also be reviewed at this time to ascertain holder's qualifications. Holders will be given an opportunity to provide data which might have a bearing on the review.

#### (11) *Other Methods of Establishing Fees*

Fees for atypical sites, or categories of use which were not established in the schedule, or sites servicing high populations, or AM radio broadcast sites exceeding 1 acre, will be determined on an individual case basis.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Reviewing Appraiser to determine fees for individual sites when market evidence, such as leases for similarly used sites, demonstrate the inapplicability of the fee schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional Reviewing Appraiser establishes that the appraisal meets Forest Service appraisal standards and the report is approved.



Competitive bidding may be used to establish fees for new sites, (FSM 2712.2).

[FR Doc. 89-19854 Filed 8-22-89; 8:45 am]

BILLING CODE 3410-11-M

# **Pacific Southwest Region; Fee Schedule for Communications Uses**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; adoption of fee schedule for communications uses.

**SUMMARY:** The Regional Forester, Pacific Southwest Region, Forest Service, is adopting a new fee schedule for communications uses on National Forest System Lands within the Pacific Southwest Region. The intent of the new fee schedule is to assess fees that are based on fair market value of the rights and privileges as mandated by the Federal Land Policy and Management Act, October 21, 1976.

**EFFECTIVE DATE:** September 22, 1989.

## **FOR FURTHER INFORMATION CONTACT:**

Questions about this policy should be addressed to Adele H. Goss or Paul Tittman, U.S. Forest Room 1016, 630 Sansome St., San Francisco, CA, 94111.—(415/556-3415 or 556-4202).

**SUPPLEMENTARY INFORMATION:** On July 28, 1988, the Regional Forester for the Pacific Southwest Region published a notice of a proposed fee schedule for communications uses (53 FR 28620) with request for comment. By notice published in the *Federal Register* (53 FR 38759 October 3, 1988) the comment period was extended.

The proposed fee schedule and policy was based on categories of use with individual fees to be determined by population, number of licensed transmitter frequencies, number of subscribers, or the nature of the use. The proposal also called for annual adjustments of the scheduled fees based upon the Consumer Price Index—Urban (CPI-U) and provided for a phase-in statement. The proposal was published simultaneously with the proposals by 5 other Regions who had coordinated their proposals to achieve nationwide consistency where possible.

## **Analysis of Public Comment**

Analysis of Public Comment:

The Pacific Southwest Region received 612 responses to the proposal. The number and percentage of comments by respondents were:

| Use categories                                     | Respondents percent |          |
|--|---------------------|----------|
|  | No.                 | Per cent |
| Respondent:  |                     |          |
| Amateur radio.....                                 | 10                  | 2        |
| Broadcast translator.....                          | 3                   |          |
| Cable and Subscription TV.....                     | 9                   | 1        |
| Cellular telephone.....                            | 8                   | 1        |
| Mobile radio: Commercial communications.....       | 520                 | 85       |
| Mobile radio: Internal communications.....         | 23                  | 4        |
| Common carrier microwave relay.....                | 3                   |          |
| Industrial microwave.....                          | 11                  | 2        |
| Natural resource and environmental monitoring..... | 0                   |          |
| Passive reflector.....                             | 1                   |          |
| Personal/private "receive only".....               | 1                   |          |
| Radio broadcast.....                               | 12                  | 2        |
| Television broadcast.....                          | 10                  | 2        |
| Other.....   | 1                   |          |

All of the comments received have been reviewed and given consideration in reaching the final decision. A summary of the major comments received and the Forest Service response by topic follows. It should be noted that the Pacific Southwest Region has coordinated its review and response to the comments with the other Regions in order to achieve as much consistency Service wide as possible.

1. *Fee levels.* A number of respondents felt that the proposed fees were extreme and unreasonable. Many individuals and small businesses indicated that the proposed fees would be too great a burden for them and that they would have to abandon their site if the schedule were implemented. Some suggested a re-evaluation and reduction in the proposed fees. Others recommended lower fees and a longer phase-in period.

A few respondents said that the proposed fee rates were too low and thus amount to public subsidies. Several suggested alternative methods for determining fees, some of which would return many times the proposed rates to the Federal Government. Among alternatives proposed were: to adopt a fee policy based on site rental income (assess a percentage of gross rental income derived from the site); to consider site value in light of the alternative cost of constructing competitive towers on private lands; to base fee as a percentage of the user's investment in improvements and equipment; to use per capita income multipliers to adjust for differences between geographical areas; and, to use private management companies, with no vested interest in the site, to establish individual fees.

After analysis of these comments, the Pacific Southwest Region is making the

following changes in the proposed communications use fee schedule:

a. To be consistent with other Regions, the fee for cable and subscription television will be based on numbers of subscribers. In most situations, this method reduces the fees charged to companies who service small populations and offers more stratification of fees for the mid-size companies. In the proposed schedule, fees were based on the census population within the franchise or service area. The change allows the fee to be based on actual use.

b. Also, for consistency among the Regions, Common Carrier Microwave Relay and Industrial Microwave Relay have been separated and re-evaluated.

c. As a result of comments concerning the market survey, the market survey was re-evaluated and additional information from the western United States was reviewed. This has resulted in the following changes from the fee schedule published in the July, 1988 Draft Federal Notice for Common Carrier Microwave Relay:

North Zone—fee lowered from \$3,500 to \$3,000

South Zone—fee lowered from \$6,500 to \$5,500

For Industrial Microwave Relay the following changes have been made:

North Zone—fee lowered from \$1,500 to \$1,000

Central Zone—fee lowered from \$4,000 to \$3,000

South Zone—fee raised from \$3,600 to \$5,000

d. The fee schedule is based upon three zones as published in the July, 1988 draft *Federal Register* Notice. There was one modification made in the zones, Inyo County was changed from the South Zone to the Central Zone.

e. In the July 28, 1988 Draft *Federal Register* Notice, the Pacific Southwest Region based the fee structure for "Commercial Communicator" and "internal Two Way" use categories on 25% of total gross income from on-site equipment, space or frequency rentals, whichever was greater. To be consistent with other Regions and to be responsive to the mobile radio industry, the Pacific Southwest Region is adopting the same fee structure as other Regions.

The same fee structure is adopted for both Mobile Radio: Commercial Communication and Mobile Radio: Internal Communication. There will be a base fee for the first transmitting frequency plus a \$200 fee for each additional transmitting frequency.

A few respondents also commented that proposed fees were too high in the



categories of Amateur Radio and Cellular Telephone. The claims of high fees were not supported by market data or were insufficient to warrant changing the fees in the final schedule. Therefore the Region is adopting fees for these categories as proposed.

**2. Sites Not Included In The Schedule.** In the July 1988 draft Federal Register Notice, the Pacific Southwest Region addressed the issue of site specific appraisals for unique communications sites or sites servicing high populations such as Mt. Wilson and other sites servicing the Los Angeles Area. Mt. Wilson, Sunset Ridge, Mt. Lukins, Johnston Peak, Magic Mountain, Santiago Peak, Sierra Peak, and Strawberry Peak are not covered by this schedule. Fees for existing uses on these sites will continue at the current rate until the authorized officer determines the fair market value. Fees for new uses and Re-evaluation of existing fees may be established using site specific market analysis or other sound business management principles. Authorization holders will be notified of any proposed changes in fees.

**3. Market Surveys.** A number of respondents felt that the market survey used to develop the proposed fee schedule was inadequate. Most indicated that the market survey and resulting fees did not give credit for enhancing public lands, used ability to pay rather than fair market value to determine the fees, did not include comparable leases for the use of private land, used insufficient market data, and did not correlate fees with investment values and site improvement costs. Less than 1 percent of the respondents provided data supporting their position.

The Pacific Southwest Region coordinated with the other Forest Service Regions in reviewing and re-analyzing the market data utilized in compiling the proposed fees. The Region reviewed additional data from the western United States. Based on this review, some fees were adjusted. Most of the fees were adjusted down, refer to section 2 which describes fee levels.

For the purposes of determining fair market value, we examined available market leases to see if the expense of developing facilities, access, and power was a factor influencing private lease rates. We found no useable correlation. The private sector leases used to establish fair market value fees do not clearly discount the site rental because of the development cost incurred by the lessee.

**4. Fee Exemption/Waivers.** Under the proposed policy, exemptions from fees and fee waivers would remain a decision of the authorized officer (36

CFR 251.57(b)). A number of respondents objected to the Forest Service policy of charging fees for communications uses on National Forest System land. Others felt that fees should be waived for any use that provided a public benefit, whether that use is of a commercial fee waiver policy unclear, vague and subject to inconsistent application. They requested a clear, consistent statement of a national fee waiver policy for specific categories of use. Some respondents felt that government and public agencies, as well as certain other users (utilities, public broadcasters, etc.) should be exempt from fees as a matter of National policy.

We agree that there should be national fee waivers established for specific categories of use or type of holder when the entire class of use or holder meets the rental fee waiver criteria. Therefore, national direction will be issued concerning fee waivers for specific categories of use and/or type of holder. The direction, which follows, is intended to clarify the intent of the waiver policy, it does not contain any substantive changes in current policy.

**a. Fee Exemption—**Exemptions are determinations that certain classes of users will not be required to pay an annual rental fee. Most such exemptions are statutory; i.e., they derive from specific fee exemption language in Public Law, and are not subject to the discretion of the authorized officer. Holders may be assessed an amount sufficient to reimburse the cost of administering the use. Holders exempt from fees include:

- Federal agencies.
- Facilities financed by Rural Electrification Administration.
- Public telecommunication systems identified and licensed as such by the Federal Communications Commission (FCC) for educational, cultural, instructional, and institutional purposes, and as described in the Communications Act of 1934, and the Federal Communications Regulations granting waiver of license fees; i.e., non-commercial educational broadcast stations as defined in 15 CFR part 2301—Public Telecommunications Facilities Program-subpart A—Definitions, Program Purposes, and Special consideration.

**b. Fee Waiver—**Waivers are discounts or reductions from payment of the full annual rental fee, and at the discretion of the authorized officer. The Forest Officer delegated the authority to issue the permit and establish the fee is also the officer authorized to determine

if a holder qualifies for a fee waiver. Fee waivers must be equitable and in the public interest (36 CFR 251.57 (b)).

(1) State and Local Government. The authorized officer shall waive fees for telecommunication facilities and systems owned and operated by a State or local government agency or instrumentality thereof, when:

- State or local government or instrumentalities thereof do not charge the Forest Service for similar services.
- The use is not installed, maintained, or otherwise financed by means of customer charges, which include but are not limited to subscription fees, membership fees or dues, or special tax assessments, and
- The use furthers the public health, safety or welfare, or is otherwise to the benefit of the general public or the programs of the Secretary of Agriculture.

(2) Other Holders. Waivers for other holders will be considered by the authorized officer on a case by case basis. If granted, fees will not be waived below \$75, which currently represents the cost to the Forest Service for administration of the authorization. This rate is, however, subject to revision on the basis of change in administrative costs.

There were also a number of responses, as well as comments sent to the Chief of the Forest Service on the proposals by all Regions, which requested a review of the Forest Service's rental fee waiver policy for radio broadcast (commercial), television broadcast (commercial) and associated broadcast translators. The respondents felt that a partial or full waiver should be granted based on the public service requirements of the Communications Act of 1934 and the provisions of the Federal Land Policy and Management Act of 1976.

As a result of these requests, the Forest Service is reviewing the national rental fee waiver policy for these categories of use. As a part of the review, the Forest Service is working with the Radio and Television Broadcasters to review the type and amount of public service provided.

Rental fees for these categories of use will remain at current levels until the review is completed and a final fee is established in the schedule. We anticipate fees for these uses will be established prior to January 1, 1990. All authorization holders and others expressing an interest in the fee schedules will be notified when the final fees are established.



5. *Categories of Use.* In the proposal, fees were based on categories of communications uses of National Forest System land. Each category was defined in the fee schedule to ensure proper classification.

A number of respondents felt that the categories of uses were too narrowly defined. Some respondents urged separation of uses such as: (1) Commercial communication microwave uses from industrial microwave uses, (2) specialized mobile radios from other uses, (3) commercial communication systems used for profit from those used for public services, and (4) TV cable enterprises serving major population centers from those serving sparsely populated rural areas.

As noted under the earlier discussion of fees, Industrial Microwave uses have been placed in a separate category from Common Carrier Microwave uses in the final policy.

After considering comments, the categories of "Commercial Communicator" and "Internal Two-Way Radio" in the proposal have been changed to "Mobile Radio: Commercial Communications". In addition, definitions for these categories have been modified for clarification at the request of industry respondents. The other categories are adopted as proposed.

6. *Definitions.* Several respondents found certain definitions and terms inadequate or confusing. Industry representatives suggested definitions and terms that would more clearly define commercial communications and internal radio communication uses.

In coordination with other Regions and the Washington Office, the Pacific Southwest Region adopted terminology defining the various types of communication uses.

Most of the proposed definitions for the categories of use remain unchanged or slightly modified. Modifications were in response to reviewers comments or to improve clarity.

Slight changes were made in the following definitions (changes to improve clarity not noted):

- A definition for Natural Resource and Environmental Monitoring is provided as follows: "This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations."
- All references to appurtenant uses are eliminated from the definition of Radio and Television Broadcast. Appurtenant uses are discussed in the Forest Service manual supplement.

Major changes were made in the definitions of Commercial Communicator and Internal Two-Way Radio. We agree with the reviewers who commented that the original definitions did not adequately describe the two categories of uses. In the final policy, the terms are defined as follows:

**Mobile Radio: Commercial Communications.** This includes mobile radio equipment which is used to provide communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMR's), private carrier two-way radio systems, and private carrier paging systems (PCPS). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

**Mobile Radio: Internal Communications.** A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purposes of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

#### 6. *Phase-in of Fee Increases.*

The proposed fee schedule provided for a 3 or 5 year phase-in of fees for current holders. It was based on the percentage and amount of increase. There was concern that the phase-in did not adequately consider the financial impacts of the increases on some holders. There were examples of fees which exceeded 100 percent of the existing fee in each year of the phase-in. It was feared that the rapid increase would adversely affect the holders and their customers. As a result, the phase-in has been modified to allow a longer phase-in period.

The new phase-in will provide for a maximum increase of 25 percent of the previous year's fees with a minimum increase of \$100 per year. The number of years it takes to reach the scheduled fee will vary. However, most of the fee increase should be phase-in within 10 years. New holders and holders adding new uses are not covered by the phase-in.

8. *Implementation.* Having considered the comments received, the Pacific Southwest Region is adopting the fee schedule with the changes noted in the foregoing discussion of comments. The policy and procedures to guide Forest

Service employees in implementing the Communications Use Fee Schedule will be issued as a Regional Supplement to Forest Service Manual Chapter 2720. The text of the supplement is set out at the end of this notice.

The fee schedule will apply immediately to new permits issued on and after the effective date of this Policy. However, the authorized officer may use site specific analysis or other sound business management principles when it is determined that the schedule is inapplicable. Fees which have been established through competitive bid, appraisal, negotiation, or other sound business management practices are not covered by the schedule and will be updated in accordance with the terms of the authorization.

The fee schedule will be implemented for existing special use authorizations with the billings for calendar year 1990.

Dated: July 14, 1989.

Norwood F. Robertshaw,

Assistant Regional Forester, Lands and Real Estate Management.

#### Fee Schedule Policy and Procedures for Communication Uses

Note: The Forest Service uses alphanumeric codes and subject headings to organize the text of direction. Only those sections of the Forest Service Manual that would be revised are set out here. Readers should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering communication use authorizations.

#### Title 2700—Special Uses Management

##### 2728—Communications

##### 2728.1—Communications Sites

##### 2. Fee Determinations

##### c. Regional Fee Schedule—

Communications site special use fees will be charged at the annual rates shown. These rates will apply without CPI-U adjustment for new authorizations issued during the remainder of C.Y. 1989, and with CPI-U adjustment in C.Y. 1990 for other authorizations. The schedule will not affect fees which have been established through appraisal, competitive bid, negotiation, or other sound business management principles; fees for these uses will be updated in accordance with terms of the authorization.

##### (1) Individual Authorization

#### FINAL FEE SCHEDULE—PACIFIC SOUTHWEST REGION

| Use Category                                 |      |
|--|------|
| Amateur Radio: All zones                     | \$75 |
| Broadcast Translator                         |      |
| Cable and Subscription Television All zones: |      |
| Number of subscribers served                 |      |
| Less than 200                                | 400  |
| 201-500                                      | 700  |



# FINAL FEE SCHEDULE—PACIFIC SOUTHWEST REGION—Continued

| Use Category                                |       |
|---|-------|
| 501-1,500.....                              | 1,400 |
| 1,501-2,500.....                            | 2,000 |
| More than 2,500.....                        | 2,400 |
| Cellular Telephone: Regionwide.....         | 6,000 |
| Common Carrier Microwave Relay <sup>1</sup> |       |
| North Zone.....                             | 3,000 |
| Central Zone.....                           | 5,500 |
| South Zone.....                             | 5,500 |
| Industrial Microwave:                       |       |
| North Zone.....                             | 1,000 |
| Central Zone.....                           | 3,500 |
| South Zone.....                             | 5,000 |

Note:—Fees of these categories of use will be established prior to 1/1/90.

<sup>1</sup> Fees for local exchange communications facilities which provide service to small populations.

## Mobile Radio: Commercial Communications

|   |  |
|---|--|
| North Zone \$700 for the 1st transmitting frequency, plus     |  |
| \$200 each subsequent transmitting frequency,                 |  |
| Central Zone \$1,500 for the 1st transmitting frequency, plus |  |
| \$200 each subsequent transmitting frequency                  |  |
| South Zone \$2,500 for the 1st transmitting frequency, plus   |  |
| \$200 each subsequent transmitting frequency                  |  |

## Mobile Radio: Internal Communications

|   |  |
|---|--|
| North Zone \$700 for 1st transmitting frequency, plus     |  |
| \$200 each subsequent transmitting frequency              |  |
| Central Zone \$1,500 for 1st transmitting frequency, plus |  |
| \$200 each subsequent transmitting frequency,             |  |
| South Zone \$1,500 for 1st transmitting frequency, plus   |  |
| \$200 each subsequent transmitting frequency              |  |

## Natural Resource and Environmental Monitoring.

| Use Category                                    |      |
|---|------|
| All Zones.....                                  | \$75 |
| Passive Reflector: <sup>1</sup> All Zones.....  | 500  |
| Personal/Private "Receive Only": All Zones..... | 75   |
| Radio Broadcast (AM/FM).....                    | *    |
| Television Broadcast.....                       | *    |
| All Zones:                                      |      |
| 0-100.....                                      | 75   |
| 101-300.....                                    | 250  |
| 301-500.....                                    | 300  |
| 500-1,000.....                                  | 500  |
| over 1,000 refer to the scheduled fee.          |      |

Note:—Fees of these categories of use will be established prior to 1/1/90.

<sup>1</sup> Fees for local exchange communications facilities which provide service to small populations.

The zone descriptions are as follows:  
Northern Zone: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen (portion), Tehama, Plumas (portion).

Mendocino, Butte, Glenn, Colusa, Lake and Yuba (that portion of the Plumas NF);

Central Zone: Sonoma, Napa, Sacramento, Sutter, Yuba (portion), Sierra, Nevada, Placer, Eldorado, Amador, Solano, Stanislaus, San Francisco, San Mateo, Santa Cruz, Santa Clara, Alameda, Contra Costa, San Joaquin, Calaveras, Alpine, Tuolumne, Monterey, San Benito, Merced, Mariposa, Madera, Fresno, Tulare, Kings, Yolo, Marin, Kern (except that portion within Los Padres NF), Plumas (that portion of the Tahoe NF), and the Lassen (except that portion of the Toiyabe NF);

Southern Zone: San Luis Obispo, Orange, Santa Barbara, Imperial, Ventura, San Diego, Kern (that portion of Los Padres NF), Los Angeles, San Bernardino, and Riverside.

## (2) Definitions

(a) *Amateur Radio.* Equipment used by individuals or groups who are licensed by FCC as amateur radio operators.

(b) *Broadcast Translator.* This category of use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. This category of use includes translators associated with public telecommunications service.

(c) *Cable and Subscription Television.* This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

(d) *Cellular.* This is a specialized service provided by commercial communicators which involves a mobile (vehicular) UHF radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

(e) *Common Carrier Microwave Relay.* This use typically includes long line carriers which relay intrastate and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These uses are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

(f) *Industrial Microwave.* This use includes microwave communication equipment not regulated by state public utility commissions. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms.

(g) *Mobile Radio: Commercial Communications.* This includes communications equipment which primarily provides communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carrier two-way systems, and private carrier paging systems (PCPs). Some entities in this category

own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

(h) *Mobile Radio: Internal Communications.* A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

(i) *Natural Resource and Environmental Monitoring.* This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations.

(j) *Passive Reflector.* Passive reflectors include various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

(k) *Personal/Private "Receive Only".* These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, including recreation residences. These facilities are personally owned and not operated for profit.

(l) *Radio Broadcast.* This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(m) *Television Broadcast.* This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (Major and independent networks) who generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

## (3) Individual Authorizations Within Facilities Owned by Others

When shared facility occupancy is authorized and each user has an authorization, the fee shall be 100% of the fee for each authorized use. There will be no \$75 discount.

## (4) Fees under Multiple-User Authorizations

To improve administration of communications sites, Forest Service policy provides for authorizing shared facility occupancies under a single authorization. By the terms and conditions, these authorization holders, rather than the Forest Service,



authorize and administer the use of their facilities by others. Collection of Forest Service fees required under this type of authorization, are burdens of the holder.

Fees for such a multiple-user authorization:  
First use = 100% of fee schedule

All other uses are subject to a \$75 discount, except for additional frequencies in the case of mobile radios. These additional frequencies are charged the full rate per the following example.

Mobile radio use is \$700 as listed in the schedule for first frequency (less \$75 discount) plus \$200 for each additional frequency.

#### (5) Discounts for Consolidation and Efficient Management

There are situations where site or facility consolidation and efficient site management is intended to meet Forest Service objectives. In these, situations, fees may be temporarily discounted to reflect the benefits received by the Forest Service. Annual fee discounts cannot exceed the holders costs or the annual fee for use of the site. The fee discounts must be considered on a case-by-case basis and approved by the Regional Forester.

Efficient site management may include the formation of user associations which assume administrative duties.

#### (6) Use of Government Owned Facilities

In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by section 7, Act of April 24, 1950 (Granger-Thye and FSM 2711.7).

#### (7) Ancillary and Appurtenant Communication Uses

Ancillary uses are those uses which provide support or intertie with another communication system on the site. The fee would be for the highest valued communications use of the holder. For example, a holder has installed a mobile radio used for internal communications which interties with an industrial microwave system in the same facility. In this case, the holder would be issued one authorization and charged a fee for industrial microwave.

Appurtenant uses are those communication uses incidental to another non-communication use of National Forest System land, such as a ski resort or marina.

No fees will be charged for ancillary/appurtenant uses.

#### (8) Phase-in of Fee Increases

Fee increases for current holders will be phased-in at a rate of 25 percent of the previous year's fee with a minimum increase of \$100 per year. The 25 percent increase will continue until the current schedule fee is reached.

For example: Current fee is \$300 and the scheduled fee is \$800

|       | Phased-in Fee      | Scheduled Fee* |
|-------|--------------------|----------------|
| Year: |                    |                |
| 1     | \$400 (\$100 min.) | \$800          |
| 2     | 500                | 832            |
| 3     | 625                | 865            |
| 4     | 781                | 900            |
| 5     | 936                | 936            |

\*Indexed using a 4 percent CPI-U.

The phase-in does not apply to new holders or existing holders adding new uses.

#### (9) Annual Fee Schedule Adjustment

All communication use fees are subject to annual adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U) for July of the current year, will be divided by the CPI-U for July of the previous 1-year to yield a CPI-U multiplier which will be used to annually update the Communication Fee Schedule.

#### (10) Other Methods of Establishing Fees

Fees will be determined on individual case basis for: (1) Sites identified as atypical (currently Mt. Wilson, Sunset Ridge, Mt. Lukins, Johnston Peak, Magic Mountain, Santiago, Sierra Peaks, and Strawberry Peak are considered atypical); (2) Categories of use which were not established in the schedule; (3) Sites servicing high populations; and (4) AM radio broadcast sites exceeding 1 acre.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Appraiser to determine fees for individual sites when market evidence, such as leases for similarly used sites, demonstrate the inapplicability of the fee schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional Appraiser establishes that the appraisal meets Forest service appraisal standards and the report is approved.

Competitive bidding may be used to establish fees for new sites (FSM 2712.2).

#### (11) Periodic Review of Fee Schedule

The Pacific Southwest Region shall, by December 31, 1994, review this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Fee waivers will also be reviewed at this time to ascertain holder's qualifications. Holders will be given an opportunity to provide data which might have a bearing on the review.

[FR Doc. 89-19858 Filed 8-22-89; 8:45 am]

BILLING CODE 3410-11-M

### Southern Region; Fee Schedule for Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of fee schedule for communications uses.

SUMMARY: The Regional Forester, Southern Region, Forest Service, is adopting a new fee schedule for communications uses on National Forest System Lands in the Southeastern States and Puerto Rico. The intent of the new fee schedule is to assess fees that are based on fair market value of the rights and privileges as mandated by the Federal Land Policy and Management Act, October 21, 1976.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Vince McCormack or George Hemingway, Lands Staff, Forest

Service, U.S.D.A., 1720 Peachtree Rd., NW, Atlanta, Georgia 30367, (404) 347-2873.

SUPPLEMENTARY INFORMATION: On July 26, 1988, the Regional Forester for the Southern Region published a notice of a proposed fee schedule for communications uses (53 FR 28026) with request for comment. By notice published in the Federal Register (53 FR 38759 October 3, 1988) the comment period was extended.

The proposed fee schedule and policy was based on categories of use with individual fees to be determined by population, number of licensed transmitter frequencies, number of subscribers, or the nature of the use. The proposal also called for annual adjustments of the scheduled fees based upon the Consumer Price Index—Urban (CPI-U) and provided for a phase-in statement. The proposal was published simultaneously with the proposals by 5 other Regions who had coordinated their proposals to achieve nation wide consistency where possible.

#### Analysis of Public Comment

The Southern Region received 60 responses to the proposal. The number and percentage of comments by respondents were:

| Use categories                                 | No. of respondents | Percent of total |
|--|--------------------|------------------|
| Amateur radio                                  | 5                  | 8                |
| Broadcast translator                           | 2                  | 3                |
| Cable and subscription TV                      | 5                  | 8                |
| Cellular telephone                             | 0                  | 0                |
| Mobile radio; commercial communications        | 9                  | 15               |
| Mobile radio; internal communications          | 18                 | 30               |
| Common carrier microwave relay                 | 1                  | 2                |
| Industrial microwave                           | 7                  | 12               |
| Natural resources and environmental monitoring | 0                  | 0                |
| Passive reflector                              | 0                  | 0                |
| Personal/private "receive only"                | 0                  | 0                |
| Radio broadcast                                | 5                  | 8                |
| Television broadcast                           | 6                  | 10               |
| Other  | 2                  | 4                |

All of the comments received have been reviewed and given consideration in reaching the final decision. A summary of the major comments received and the Forest Service response by topic follows. It should be noted that the Southern Region has coordinated its review and response to the comments with the other Regions in order to achieve as much consistency Service wide as possible.

1. *Fees levels.* A number of respondents felt that the proposed fees



were extreme and unreasonable. Many individuals and small businesses indicated that the proposed fees would be too great a burden for them and that they would have to abandon their sites if the schedule were implemented. Some suggested a re-evaluation and reduction in the proposed fees. Others recommended lower fees and a longer phase-in period.

A few respondents said that the proposed fee rates were too low and thus amount to public subsidies. Several suggested alternative methods for determining fees, some of which would return many times the proposed rates to the Federal Government. Among alternatives proposed were: To adopt a fee policy based on site rental income (assess a percentage of gross rental income derived from the site); to consider site value in light of the alternative cost of constructing competitive towers on private lands; to base fee as a percentage of the user's investment in improvements and equipment; to use per capita income multipliers to adjust for differences between geographical areas; and to use private management companies, with no vested interest in the site, to establish individual fees.

After analysis of these comments, the Southern Region is making the following changes in the proposed communication site fee schedule:

a. To be consistent with other Regions, the fees for cable and subscriber television will be based on numbers of subscribers. In most situations, this method reduces the fees charged to companies who service small populations and offers more stratification of fees for the mid-size companies. In the proposed schedule, fees were based on the census population within the franchise or service area. The change allows the fee to be based on actual use.

b. Also, for consistency among the Regions, common carrier Microwave Relays and Industrial Microwave Relays have been separated and re-evaluated. This results in lower fees for Industrial Microwave Relays on those sites in the mountain areas of the Southern Region (AR, GA, KY, NC, TN, VA and PR).

c. The same fee structure is adopted for both Mobile Radio: Commercial Communication and Mobile Radio: Internal Communication. There will be a base fee for the first transmitting frequency plus a \$200 fee for each additional transmitting frequency. This will result in a reduction of fees for smaller operations but will result in a slight increase for some large operations.

A few respondents also commented that proposed fees were too high in the categories of: Amateur Radio, Common Carrier Microwave Relay, Industrial Microwave, and Mobile Radio: Commercial Communications. The claims of high fees were not supported by market data or were insufficient to warrant the fees in the final schedule. Therefore the Region is adopting fees for these categories as proposed.

2. *Market Survey.* A number of respondents felt that the market survey used to develop the proposed fee schedule was inadequate. Most indicated that the market survey and resulting fees did not give credit for enhancing public lands, used ability to pay rather than fair market value to determine the fees, did not include comparable leases for the use of private land, used insufficient market data, and did not correlate fees with investment values and site improvement costs. Less than 8% of the respondents provided data supporting their position.

The Southern Region coordinated with the Forest Service Regions in reviewing the re-analyzing the market data utilized in compiling the proposed fees. No major discrepancies were found in the market data compiled by the Forest Service. The data was found to be adequate for fee determination.

For the purposes of determining fair market value, we examined available market leases to see if the expense of developing facilities, access, and power was a factor influencing private leases rates. We found no usable correlation. The private sector leases used to establish fair market value fee do not clearly discount the site rental because of the development cost incurred by the lessee.

3. *Fee Exemptions/Waivers.* Under the proposed policy, exemptions from fees and fee waivers would remain a decision of the authorized officer (36 CFR 251.57(b)). A number of respondents objected to the Forest Service policy of charging fees for communications uses on National Forest System land. Others felt that fees should be waived for any use that provides a public benefit, whether that use is of a commercial nature or not. Most respondents to this issue found the current fee waiver policy unclear, vague and subject to inconsistent application. They requested a clear, consistent statement of a national fee waiver policy for specific categories of use. Some respondents felt that government and public agencies, as well as certain other users (utilities, public broadcasters, etc.) should be exempt from fees as a matter of National policy.

We agree that there should be national fee waivers established for specific categories of use or type of holder when the entire class of use or holder meets the rental fee waiver criteria. Therefore, national direction will be issued concerning fee waivers for specific categories of use and/or type of holder. The direction, which follows, is intended to clarify the intent of the waiver policy, it does not contain any substantive changes in current policy.

a. *Fee exemption*—Exemptions are determinations that certain classes of users will not be required to pay an annual rental fee. Most such exemptions are statutory; i.e., they derive from specific fee exemption language in Public Law, and are not subject to the discretion of the authorized officer. However, holders may be assessed an amount sufficient to reimburse the cost of administering the use. Holders exempt from fees include:

- Federal agencies
- Facilities established by Rural Electrification Administration
- Public telecommunication systems identified and licensed as such by the Federal Communications Commission (FCC) for educational, cultural, instructional, and institutional purposes, and as described in the Communications Act of 1934, and the Federal Communications Regulations granting waiver of license fees; i.e., non-commercial educational broadcast stations as defined in 15 CFR Part 2301—Public Telecommunications Facilities Program, Subpart A—Definitions, Program Purposes, and Special consideration.

b. *Fee Waiver*—Waivers are discounts or reductions from payment of the full annual rental fee, by provisions of law and regulation, and at the discretion of the authorized officer. The Forest Officer delegated the authority to issue the permit and establish the fee is also the officer authorized to determine if a holder qualifies for a fee waiver. Fee waivers must be equitable and in the public interest. (36 CFR 251.57(b)).

(1) *State and Local Government.* The authorized officer shall waive fees for telecommunication facilities and systems owned and operated by a State or local government agency or instrumentality thereof, when:

- State or local government or instrumentalities thereof do not charge the Forest Service for similar services
- The use is not installed, maintained, or otherwise financed by means of



customer charges, which include but are not limited to subscription fees, membership fees or dues, or special tax assessments; and

—The use furthers the public health, safety, or welfare, or is otherwise to the benefit of the general public or the programs of the Secretary of Agriculture.

(2) Other Holders. Waivers for other holders will be considered by the authorized officer on a case by case basis. If granted, fees will not be waived below \$75, which currently represents the cost to the Forest Service for administration of the authorization. This rate is, however, subject to revision on the basis of change in administrative costs.

There were also a number of responses, as well as comments sent to the Chief of the Forest Service on the proposals by all Regions, which requested a review of the Forest Service's rental fee waiver policy for radio broadcast (commercial), television broadcast (commercial) and associated broadcast translators. The respondents felt that a partial or full waiver should be granted based on the public service requirements of the Communications Act of 1934 and the provisions of the Federal Land Policy and Management Act of 1976.

As a result of these requests, the Forest Service is reviewing the national rental fee waiver policy for these categories of use. As a part of the review, the Forest Service is working with the Radio and Television Broadcasters to review the type and amount of public service provided.

Rental fees for these categories of use will remain at current levels until the review is completed and a final fee is established in the schedule. We anticipate fee for these uses will be established prior to January 1, 1990. All authorization holders and others expressing an interest in the fee schedules will be notified when the final fees are established.

4. *Categories of Use.* In the proposal, fees were based on categories of communication uses on National Forest System land. Each category was defined in the fee schedule to ensure proper classification.

A number of respondents felt that the categories of uses were too narrowly defined. Some respondents urged separation of uses such as: (1) Commercial communication microwave uses from industrial microwave uses, (2) specialized mobile radios from other uses; (3) commercial communication systems used for profit from those used for public services, and (4) TV cable

enterprises serving major population centers from those serving sparsely populated rural areas.

As noted under the earlier discussion of fees, industrial microwave uses have been placed in a separate category from common carrier microwave uses in the final policy.

After considering comments, the categories of "Commercial Communicator" and "Internal Two-Way Radio" in the proposal have been changed to "Mobile Radio: Commercial Communications" and "Mobile Radio: Internal Communications". In addition, definitions for these categories have been modified for clarification at the request of industry respondents. The other categories are adopted as proposed.

5. *Definitions.* Several respondents found certain definitions and terms inadequate or confusing. Industry suggested definitions and terms that more clearly define commercial communications and internal radio communication uses.

In coordination with other Regions and the Washington Office, the Southern Region has adopted common terminology defining the various types of communication uses.

Most of the proposed definitions for the categories of use remain unchanged or slightly modified. Modifications were in response to reviewers comments or to improve clarity.

Slight changes were made in the following definitions (changes to improve clarity not noted):

—A definition for Natural Resource and Environmental Monitoring is provided as follows: "This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations."

—All references to appurtenant uses are eliminated from the definition of Radio and Television Broadcast. Appurtenant uses are discussed in the Forest Service manual supplement.

Major changes were made in the definitions of Commercial Communicator and Internal Two-Way Radio. We agree with the reviewers who commented that the original definitions did not adequately describe the two categories of uses. In the final policy, the terms are defined as follows:

Mobile Radio: Commercial Communications. This includes communication equipment which is used to provide communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public

utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMR's), private carrier two-way radio systems, and private carrier paging systems (PCPS). Some entities in this category own and lease building, tower, an related facility space as part of their business enterprise and may act as facility managers.

Mobile Radio: Internal Communications. A private mobile radio system licensed by the Federal Communication Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

#### 6. *Phase-in of Fee Increases.*

The proposed fee schedule provided for a 3 or 5 year phase-in of fees for current holders. It was based on the percentage and amount of increase. There was concern that the phase-in did not adequately consider the financial impacts of the increases on some holders. There were examples of fees which exceeded 100 percent of the existing fee in each year of the phase-in. It was feared that the rapid increase would adversely affect the holders and their customers. As a result, the phase-in has been modified to allow a longer phase-in period.

The new phase-in will provide for a maximum increase of 25 percent of the previous year's fees with a minimum increase of \$100 per year. The number of years it takes to reach the schedule fee will vary. However, most of the fee increases should be phased-in within 10 years. New holders and holders adding new uses are not covered by the phase-in.

7. *Implementation.* Having considered the comments received, the Southern Region is adopting the fee schedule with the changes noted in the foregoing discussion of comments. The policy and procedures to guide Forest Service employees in implementing the Communications Use Fee Schedule will be issued as a Regional Supplement to Forest Service Manual Chapter 2720. The text of the supplement is set out at the end of this notice.

The fee schedule will apply immediately to all new permits issued on and after the effective date of this policy. The fee schedule will be implemented for all existing special use authorizations with the billings for calendar year 1990.



Dated: May 23, 1989.

Robert B. Erickson,  
Deputy Regional Forester.

### Fee Schedule Policy and Procedures for Communications Uses

Note: The Forest Service uses alphanumeric codes and subject headings to organize the text of direction. Only those sections of the Forest Service Manual that would be revised are set out here. Readers

should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering communication use authorizations.)

### Title 2700—Special Uses Management

#### 2728—COMMUNICATIONS 2728.1—Communications Sites

2. Fee determinations  
c. Regional Fee Schedule—  
Communications use special use fees will be charged at the annual rates shown in the

schedule below. These rates will apply without CPI-U adjustment for new authorizations issued during the remainder of C.Y. 1989, and with CPI-U adjustment in C.Y. 1990 for all authorizations. The schedule will not affect fees which have been established through appraisal, competitive bid, negotiation, or other sound business management principles; fees for these uses will be updated in accordance with terms of the authorization.

#### (1) Individual Authorization

### FINAL FEE SCHEDULE—SOUTHERN REGION

| Use Category   | AL  | AR    | FL    | GA, NC,<br>SC, TN,<br>VA | KY    | LA  | MS  | TX    | PR    |
|--|-----|-------|-------|--------------------------|-------|-----|-----|-------|-------|
| Radio Broadcast (AM & FM) Service Area Population (Not applicable for AM radio sites over one acre)..... | (*) | (*)   | (*)   | (*)                      | (*)   | (*) | (*) | (*)   | (*)   |
| Television Broadcast Service Area Population.....  | (*) | (*)   | (*)   | (*)                      | (*)   | (*) | (*) | (*)   | (*)   |
| Broadcast Translator.....  | (*) | (*)   | (*)   | (*)                      | (*)   | (*) | (*) | (*)   | (*)   |
| Cable and Subscription TV Number of subscribers:   |     |       |       |                          |       |     |     |       |       |
| Less than 200.....   |     |       |       |                          |       |     |     |       |       |
| 201 to 500.....  |     |       |       |                          |       |     |     |       |       |
| 501 to 1,500.....  |     |       |       |                          |       |     |     |       |       |
| 1,501 to 2,500.....  |     |       |       |                          |       |     |     |       |       |
| More than 2,500.....   |     |       |       |                          |       |     |     |       |       |
| Common Carrier Microwave Relay.....  | 300 | 2,500 | 2,000 | 2,500                    | 2,500 |     | 600 | 1,800 | 1,300 |
| Industrial Microwave.....  | 300 | 3,000 |       | 2,500                    | 2,400 |     | 600 | 1,200 | 4,000 |
| Mobile Radio: Commercial Communication, First licensed transmitter frequency.....                        |     | 1,200 |       | 1,200                    | 1,500 |     |     |       | 2,000 |
| Each additional licensed transmitter frequency.....  |     | 400   |       | 400                      | 400   |     |     |       | 450   |
| Mobile Radio: Internal Communications, First licensed transmitter frequency.....                         |     | 200   |       | 200                      | 200   |     |     |       | 200   |
| Each additional licensed transmitter frequency.....  | 300 | 400   |       | 400                      | 400   | 300 | 360 | 500   | 450   |
| Cellular.....  | 200 | 200   |       | 200                      | 200   | 200 | 200 | 200   | 200   |
| Passive Reflector.....   |     | 400   |       | 400                      | 400   |     |     |       | 225   |
| Amateur Radio.....   | 75  | 75    | 75    | 75                       | 75    | 75  | 75  | 75    | 75    |
| Personal/Private "Receive Only".....   | 75  | 75    | 75    | 75                       | 75    | 75  | 75  | 75    | 75    |
| Natural Resource and Environmental Monitoring.....   | 75  | 75    | 75    | 75                       | 75    | 75  | 75  | 75    | 75    |

\*Fees of these categories of use will be established prior to 1/1/90

#### (2) Definitions

(a) *Amateur Radio*. Equipment used by individuals or groups who are licensed by FCC as amateur radio operators.

(b) *Broadcast Translator*. This category of use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. This category of use includes translators associated with public telecommunications service.

(c) *Cable and Subscription Television*. This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

(d) *Cellular*. This is a specialized service provided by commercial communicators which involves a mobile (vehicular) radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

(e) *Common Carrier Microwave Relay*. This use typically includes long line carriers which relay intrastate and interstate telephone, television, information, and data transmissions using point to point microwave

networks or systems. These uses are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

(f) *Industrial Microwave*. This use includes microwave communication equipment not regulated by state public utility commissions. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms.

(g) *Mobile Radio: Commercial Communications*. This includes communications equipment which primarily provides communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carrier two-way systems, and private carrier paging systems (PCPs). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

(h) *Mobile Radio: Internal Communications*. A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business,

community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

(i) *Natural Resource and Environmental Monitoring*. This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, seismic stations, and snow measuring stations.

(j) *Passive Reflector*. Passive reflectors include various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

(k) *Personal/Private "Receive Only"*. These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, including recreation residences. These facilities are personally owned and not operated for profit.

(l) *Radio Broadcast*. This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising and public radio stations whose



revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(m) *Television Broadcast.* This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (Major and independent networks) who generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

### (3) Individual Authorizations Within Facilities Owned by Others

When shared facility occupancy is authorized and each user has an authorization, the fee shall be 100% of the fee for each authorized use. There will be no \$75 discount.

### (4) Fees Under Multiple-User Authorizations

To improve administration of communications sites, Forest Service policy provides for authorizing shared facility occupancies under a single authorization. By the terms and conditions, these authorization holders, rather than the Forest Service, authorize and administer the use of their facilities by others. Collection of Forest Service fees required under this type of authorization, are burdens of the holder.

Fees for such a multiple-user authorization: First use = 100% of fee schedule

All other uses are subject to a \$75 discount, except for additional frequencies in the case of mobile radios. These additional frequencies are charged the full rate per the following example:

Mobile radio use will be \$300 to \$500 as listed in the schedule for first frequency (less \$75 discount) plus \$200 for each additional frequency.

### (5) Discounts for Consolidation and Efficient Management

There are situations where site or facility consolidation and efficient site management is intended to meet Forest Service objectives. In these situations, fees may be temporarily discounted to reflect the benefits received by the Forest Service. Annual fee discounts cannot exceed the holders costs or the annual fee for use of the site. The fee discounts must be considered on a case-by-case basis and approved by the Regional Forester.

Efficient site management may include the formation of user associations which assume administrative duties traditionally completed by the Forest Service.

### (6) Use of Government Owned Facilities

In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by section 7, Act of April 24, 1950 (Granger-Thye and FSM 2711.7).

### (7) Ancillary and Appurtenant Communication Uses

Ancillary uses are those uses which provide support or intertie with another communication system on the site. The fee would be for the highest valued communications use of the holder. For example, a holder has installed a mobile radio used for internal communications which interties with an industrial microwave system in the same facility. In this case, the holder would be issued one authorization and charged a fee for industrial microwave.

Appurtenant uses are those communication uses incidental to another non-communication use of the National Forest System land, such as a ski resort or marina.

No fees will be charged for ancillary/appurtenant uses.

### (8) Phase-in of Fee Increases

Fee increases for current holders will be phased-in at a rate of 25 percent of the previous year's fee with minimum increase of \$100 per year. The 25 percent increase will continue until the current scheduled fee is reached.

For example: Current fee is \$300 and the scheduled fee is \$800

|             | Phased-in fee | Scheduled fee* |
|-------------|---------------|----------------|
| Year 1..... | \$400         | \$800          |
| Year 2..... | 500           | 832            |
| Year 3..... | 625           | 865            |
| Year 4..... | 781           | 900            |
| Year 5..... | 936           | 936            |

\* Indexed using a 4 percent CPI-U.

<sup>1</sup> \$100 min.

The phase-in does not apply to new holders or existing holders adding new uses.

### (9) Annual Fee Schedule Adjustment

All communication use fees subject to annual adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U) for July of the current year will be divided by the CPI-U for July of the previous year to yield a CPI-U multiplier which will be used to annually update the Communications Use Fee Schedule.

### (10) Periodic Review of Fee Schedule

The Southern Region shall, by December 31, 1994, review this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Fee waivers will also be reviewed at this time to ascertain holder's qualifications. Holders will be given an opportunity to provide data which might have a bearing on the review.

### (11) Other Methods of Establishing Fees

Fees will be determined on individual case basis for: (1) Atypical sites (the Mt. Pisgah Communications Site in North Carolina, the Puerto Rico Telephone Company Facility on the El Yunque Communications Site in Puerto Rico and the Federal Communications uses on East Peak in Puerto Rico); (2) Categories of use which were not established in the schedule; (3) Sites servicing high populations;

and (4) AM radio broadcast sites exceeding 1 acre.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Reviewing Appraiser to determine fees for individual sites when market evidence, such as leases for similarly used sites, demonstrate the inapplicability of the fee schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional Appraiser establishes that the appraisal meets Forest Service appraisal standards and the report is approved.

Competitive bidding may be used to establish fees for new sites, (FSM 2712.2).

[FR Doc. 89-19859 Filed 8-22-89; 8:45 am]

BILLING CODE 3410-11-M

## Southwestern Region; Fee Schedule for Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of fee schedule for communications uses.

**SUMMARY:** The Regional Forester, Southwestern Region, Forest Service, is adopting a new fee schedule for communications uses on National Forest System lands in New Mexico and Arizona. The intent of the new fee schedule is to assess fees that are based on fair market value of the rights and privileges authorized as mandated by the Federal Land Policy and Management Act, October 21, 1976.

**EFFECTIVE DATE:** September 22, 1989.

**FOR FURTHER INFORMATION CONTACT:** Questions about this policy should be addressed to Art Maynard, Recreation Staff, or Ray Woodbury, Lands and Minerals Staff, 517 Gold Avenue, SW, Albuquerque, New Mexico 87102, (505) 842-3156.

**SUPPLEMENTARY INFORMATION:** On July 28, 1988, the Regional Forester for the Southwestern Region published a notice of a proposed fee schedule for communications uses (53 FR 28026) with request for comment. By notice published in the Federal Register (53 FR 38759 October 3, 1988) the comment period was extended.

The proposed fee schedule and policy was based on categories of use with individual fees to be determined by population, number of licensed transmitter frequencies, number of subscribers, or the nature of the use. The proposal also called for annual adjustments of the scheduled fees based upon the Consumer Price Index—Urban (CPI-U) and provided for a phase-in of fees. The proposal was published simultaneously with the proposals by 5 other Regions, who had coordinated



their proposals to achieve nationwide consistency where possible.

#### Analysis of Public Comment

The Southwestern Region received 50 responses to the proposal. The number and percentage of comments by respondents were:

| Use categories   | Total No. of respondents | No. of percent |
|--|--------------------------|----------------|
| Amateur Radio.....                                       | 2                        | 1              |
| Radio Broadcast.....                                     | 16                       | 8              |
| Independent TV Broadcast-<br>er .....                    | 6                        | 3              |
| Low Power TV Broadcaster...                              | 2                        | 1              |
| Mobile Radio: Commercial<br>Communications .....         | 18                       | 9              |
| Mobile Radio: Internal Com-<br>munications .....         | 12                       | 6              |
| Common Carrier Microwave<br>Relay .....                  | 6                        | 3              |
| Industrial Microwave .....                               | 6                        | 3              |
| Natural Resource and Envi-<br>ronmental Monitoring ..... | 2                        | 1              |
| Translator (Broadcast) .....                             | 10                       | 5              |
| Translator (TV) .....                                    | 10                       | 5              |
| Translator (FM) .....                                    | 8                        | 4              |
| Other (Communications<br>Management Consultant)...       | 2                        | 1              |

All of the comments received have been reviewed and given consideration in reaching the final decision. A summary of the major comments received and the Forest Service response by topic follows. It should be noted that the Southwestern Region has coordinated its review and response to the comments with the other Regions in order to achieve as much consistency Servicewide as possible.

**1. Fee levels.** A number of respondents felt that the proposed fees were extreme and unreasonable. Many individuals and small businesses indicated that the proposed fees would be too great a burden for them and that they would have to abandon their sites if the schedule were implemented. Some suggested a re-evaluation and reduction in the proposed fees. Others recommended lower fees and a longer phase-in period.

A few respondents said that the proposed fee rates were too low and thus amount to public subsidies. Several suggested alternative methods for determining fees, some of which would return many times the proposed rates to the Federal Government. Among alternatives proposed were: to adopt a fee policy based on site rental income (assess a percentage of gross rental income derived from the site); to consider site value in light of the alternative cost of constructing competitive towers on private lands; to base fee as a percentage of the user's investment in improvements and

equipment; to use per capita income multipliers to adjust for differences between geographical areas; and to use private management companies, with no vested interest in the site, to establish individual fees.

After analysis of these comments, the Southwestern Region is making the following changes in the proposed communication site fee schedule:

a. To be consistent with other Regions, the fees for cable and subscription television will be based on numbers of subscribers. In most situations, this method reduces the fees charged to companies who service small populations and offers more stratification of fees for the mid-size companies. In the proposed schedule, fees are based on the census population within the franchise or service area. The change allows the fee to be based on actual use.

b. Also, for consistency among the Regions, common carrier Microwave Relays and Industrial Microwave Relays have been separated and re-evaluated.

c. The same fee structure is adopted for both Mobile Radio: Commercial Communications and Mobile Radio: Internal Communications. There will be a base fee for the first transmitting frequency plus a \$200 fee for each additional transmitting frequency. These changes were made based on public comment and to achieve consistency between all of the Regions. For the Mobile Radio: Internal Communications, this will result in a reduction of fees for smaller operations, but may result in a slight increase for some large operations. Substantial savings are possible when users agree to be included under a multiple user authorization. For Mobile Radio: Commercial Communications, the fee was changed from a fee per frequency with a minimum fee level established, to a base fee plus a fee for each additional transmitting frequency. The base fee will not apply to each tenant under the holder's multiple user authorization. These changes may result in slightly higher fees than proposed in earlier proposals; however, this will depend on the type and size of the business.

A few respondents also commented that proposed fees were too high in the categories of: Common Carrier Microwave Relay, Industrial Microwave, Commercial Communications, Industrial Communications, Radio and TV Broadcasters, and TV and FM Translators. The claims of high fees were not supported by market data or the data was insufficient to warrant changing the fees in the final schedule.

Therefore the Region is adopting fees for these categories as proposed. Most of the FM and television broadcast authorizations in the Region are located on Sandia Crest, Peralta Ridge or the Santa Catalina Mountains; which are atypical sites. A proposed fee schedule for these atypical sites was announced in August of 1988 by a Regional Forester letter. Final fee schedules for atypical sites and translator users throughout all value zones will be announced by a Regional Forester Decision Notice at a later date.

**2. Market Survey.** A number of respondents felt that the market survey used to develop the proposed fee schedule was inadequate. Most indicated that the market survey and resulting fees did not give credit for enhancing public lands, used ability to pay rather than fair market value to determine the fees, did not include comparable leases for the use of private land, used insufficient market data, and did not correlate fees with investment values and site improvement costs. Some users suggested that fees be based on the square footage occupied or that fees be based on grazing land value and cost to administer (purported to be a sound business management practice). Less than 3% of the respondents provided data supporting their position.

The Southwestern Region coordinated with the other Forest Service Regions in reviewing and re-analyzing the market data utilized in compiling the proposed fees. No major discrepancies were found in the market data compiled by the Forest Service. The data was found to be adequate for fee determination.

For the purposes of determining fair market value, we examined available market leases to see if the expense of developing facilities, access, and power was a factor influencing private lease rates. The private sector leases used to establish fair market value do not clearly discount the site rental because of the development cost incurred by the lessee.

**3. Fee Exemption/Waivers.** Under the proposed policy, exemptions from fees and fee waivers would remain a decision of the authorized officer (36 CFR 251.57(b)). A number of respondents objected to the Forest Service policy of charging fees for communication uses on National Forest System land. Others felt that fees should be waived for any use that provides a public benefit, whether that use is of a commercial nature or not. Most respondents to this issue found the current fee waiver policy unclear, vague and subject to inconsistent application. They requested a clear, consistent



statement of a national fee waiver policy for specific categories of use. Some respondents felt that government and public agencies, as well as certain other users (utilities, public broadcasters, etc.) should be exempt from fees as a matter of National policy.

We agree that there should be national fee waivers established for specific categories of use or type of holder when the entire class of use or holder meets the rental fee waiver criteria. Therefore, national direction will be issued concerning fee waivers for specific categories of use and/or type of holder. The direction, which follows, is intended to clarify the intent of the waiver policy, it does not contain any substantive changes in current policy.

a. *Fee exemption*—Exemptions are determinations that certain classes of users will not be required to pay an annual rental fee. Most such exemptions are statutory; i.e., they derive from specific fee exemption language in Public Law, and are not subject to the discretion of the authorized officer. However, holders may be assessed an amount sufficient to reimburse the cost of administering the use. Holders exempt from fees include:

- Federal agencies
- Facilities established by Rural Electrification Administration
- Public telecommunication systems identified and licensed as such by the Federal Communications Commission (FCC) for educational, cultural, instructional, and institutional purposes, and as described in the Communications Act of 1934, and the Federal Communications Regulations granting waiver of license fees; i.e., non-commercial educational broadcast stations as defined in 15 CFR Part 2301—Public Telecommunications Facilities Program, Subpart A—Definitions, Program Purposes, and Special consideration.

b. *Fee Waiver*—Waivers are discounts or reductions from payment of the full annual rental fee, by provisions of law and regulation, and at the discretion of the authorized officer. The Forest officer delegated the authority to issue the permit and establish the fee is also the officer authorized to determine if a holder qualifies for a fee waiver. Fee waivers must be equitable and in the public interest. (36 CFR 251.57(b)).

(1) *State and Local Government*: The authorized officer shall waive fees for telecommunication facilities and systems owned and operated by a State or local government agency or instrumentality thereof, when:

- State or local government or instrumentalities thereof do not

charge the Forest Service for similar services;

- The use is not installed, maintained, or otherwise financed by means of customer charges, which include but are not limited to subscription fees, membership fees or dues, or special tax assessments; and
- The use furthers the public health, safety, or welfare, or is otherwise to the benefit of the general public or the programs of the Secretary of Agriculture.

(2) *Nonprofit Holders*: The holder is a nonprofit association or nonprofit corporation which is not controlled or owned by profit making corporations of business enterprises and which is engaged in public or semi-public activity to further public health, safety, or welfare, etc.

(3) *Other Holders*: Waivers for other holders will be considered by the authorized officer on a case by case basis. If granted, fees will not be waived below \$75, which currently represents the cost to the Forest Service for administration of the authorization. This rate is, however, subject to revision on the basis of change in administrative costs.

There were also a number of responses, as well as comments sent to the Chief of the Forest Service on the proposals by all Regions, which requested a review of the Forest Service's rental fee waiver policy for radio broadcast (commercial), television broadcast (commercial) and associated broadcast translators. The respondents felt that a partial or full waiver should be granted based on the public service requirements of the Communications Act of 1934 and the provisions of the Federal Land Policy and Management Act of 1976.

As a result of these requests, the Forest Service is reviewing the national rental fee waiver policy for these categories of use. As a part of the review, the Forest Service is working with the Radio and Television Broadcasters to review the type and amount of public service provided.

Rental fees for these categories of use will remain at current levels until the review is completed and a final fee is established in the schedule. We anticipate fees for these uses will be established prior to January 1, 1990. All authorization holders and others expressing an interest in the fee schedules will be notified when the final fees are established.

4. *Categories of Use*. In the proposal, fees were based on categories of communication uses on National Forest System land. Each category was defined

in the fee schedule to ensure proper classification.

A number of respondents felt that the categories of uses were too narrowly defined. Some respondents urged separation of uses such as: (1) Commercial communication microwave uses from industrial microwave uses, (2) specialized mobile radios from other uses, (3) commercial communication systems used for profit from those used for public services, and (4) TV cable enterprises serving major population centers from those serving sparsely populated rural areas.

As noted under the earlier discussion of fees, industrial microwave uses have been placed in a separate category from common carrier microwave uses in the final policy.

After considering comments, the categories of "Commercial Communicator" and "Internal Two-Way Radio" in the proposal have been changed to "Mobile Radio: Commercial Communications" and "Mobile Radio: Internal Communications". In addition, definitions for these categories have been modified for clarification at the request of industry respondents. The other categories are adopted as proposed.

5. *Phase-in of Fee Increases*. The proposed fee schedule provided for a 3 or 5 year phase-in of fees for current holders. It was based on the percentage and amount of increase. There was concern that the phase-in did not adequately consider the financial impacts of the increases on some holders. There were examples of fees which exceeded 100 percent of the existing fee in each year of the phase-in. It was feared that the rapid increase would adversely affect the holders and their customers. As a result, the phase-in has been modified to allow a longer phase-in period.

The new phase-in will provide for a maximum increase of 25 percent of the previous year's fees with a minimum increase of \$100 per year. The number of years it takes to reach the scheduled fee will vary. However, most of the fee increases should be phased-in within 10 years. New holders and holders adding new uses are not covered by the phase-in.

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In coordination with other Regions and the Washington Office, the Southwestern Region has adopted



common terminology defining the various types of communications uses.

Most of the proposed definitions for the categories of use remain unchanged or slightly modified. Modifications were in response to reviewers comments or to improve clarity.

Slight changes were made in the following definitions (changes to improve clarity not noted):

—A definition for Natural Resource and Environmental Monitoring is provided as follows: "This use includes the transmission of telemetry data from a remote site to a central station. Uses may include weather stations, seismic stations, and snow measuring stations.

—All references to appurtenant uses are eliminated from the definition of Radio and Television Broadcast. Appurtenant uses are discussed in the Forest Service manual supplement.

Major changes were made in the definitions of Commercial Communicator and Internal Two-Way Radio. We agree with the reviewers who commented that the original definitions did not adequately describe the two categories of uses. In the final policy, the terms are defined as follows:

**Mobile Radio: Commercial Communications.** This includes communication equipment which is used to provide communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public

utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMR's), private carrier paging systems (PCPS). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

**Mobile Radio: Internal Communications.** A private mobile radio system licensed by the Federal Communications Commission (FCC) and used a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the permittee (license holder).

6. **Implementation.** Having considered the comments received, the Southwestern Region is adopting the fee schedule with the changes noted in the foregoing discussion of comments. The policy and procedures to guide Forest Service employees in implementing the Communications Use Fee Schedule will be issued as a Regional Supplement to Forest Service Manual Chapter 2720. The text of the supplement is set out at the end of this notice.

The fee schedule will apply immediately to all new permits issued on and after the effective date of this

policy. The fee schedule will be implemented for all existing special use authorizations with the billings for calendar year 1990.

Dated: July 17, 1989.

David F. Jolly

Regional Forester

### Fee Schedule Policy and Procedures for Communications Uses

**Note:** The Forest Service uses alphanumeric codes and subject headings to organize the test of direction. Only those sections of the Forest Service Manual that would be revised are set out here. Readers should keep in mind that the audience of this direction is Forest Service employees charged with issuing and administering communications use authorizations.

### Forest Service Manual

#### Title 2700—Special Uses Management

#### 2728—Communications

#### 2728.1—Communications Sites

#### 2. Fee Determinations

#### c. Regional Fee Schedule—

Communications use special use fees will be charged at the annual rates shown in the schedule below. These rates will apply without CPI-U adjustment for new permits issued during the remainder of C.Y. 1989, and with CPI-U adjustment beginning in C.Y. 1990 for all permits. The schedule does not affect fees established through appraisal, competitive bid, negotiation, or other sound business management principle. In these situations, fees will be updated in accordance with the terms of the authorization.

#### (1) Individual Authorization

### FINAL FEE SCHEDULE—SOUTHWESTERN REGION

| Use category   | New Mexico   |              |              |              | Arizona     |              |       |
|--|--------------|--------------|--------------|--------------|-------------|--------------|-------|
|  | Value Zone 2 | Value Zone 3 | Value Zone 4 | Value Zone 5 | Ord & Elden | Intermediate | Rural |
| Amateur Radio.....   | 75           | 75           | 75           | 75           | 75          | 75           | 75    |
| Broadcast Translator.....  | *            | *            | *            | *            | *           | *            | *     |
| Cable & Subscription TV Number of subscribers.....                   |              |              |              |              | 2,800       | 1,600        | 1,200 |
| Less than 200.....   | 400          | 400          | 400          | 400          |             |              |       |
| 201-500.....   | 750          | 750          | 750          | 750          |             |              |       |
| 501-1,500.....   | 1,350        | 1,350        | 1,350        | 1,350        |             |              |       |
| 1,501-2,500.....   | 2,000        | 2,000        | 2,000        | 2,000        |             |              |       |
| More than 2,500.....   | 2,000        | 2,000        | 2,000        | 2,000        |             |              |       |
| Cellular.....  | 3,500        | **           | **           | **           | **          | **           | **    |
| Common Carrier Microwave Relay.....                                  | 4,500        | 2,300        | 1,600        | 1,600        | 4,500       | 2,400        | 2,000 |
| Industrial Microwave.....  | 2,000        | 1,500        | 1,000        | 750          | 2,500       | 1,600        | 1,200 |
| Mobile Radio:  |              |              |              |              |             |              |       |
| Commercial Communication (First licensed transmitter frequency)..... | 1,000        | 800          | 600          | 400          | 1,200       | 600          | 500   |
| Each additional licensed transmitter frequency.....                  | 200          | 200          | 200          | 200          | 200         | 200          | 200   |
| Mobile Radio:  |              |              |              |              |             |              |       |
| Internal Communications (First licensed Transmitter frequency).....  | 1,000        | 800          | 600          | 400          | 1,200       | 600          | 500   |
| Each additional licensed transmitter frequency.....                  | 200          | 200          | 200          | 200          | 200         | 200          | 200   |
| Natural Resource and Environmental Monitoring.....                   | 75           | 75           | 75           | 75           | 75          | 75           | 75    |
| Passive Reflector.....   | **           | **           | 475          | 475          | **          | 500          | 400   |
| Personal/Private "Receive Only".....                                 | 75           | 75           | 75           | 75           | 75          | 75           | 75    |
| Radio Broadcast (FM).....  | *            | *            | *            | *            | *           | *            | *     |
| Television Broadcast.....  | *            | *            | *            | *            | *           | *            | *     |

\* Fees of these categories of use will be established prior to 1/1/90.

\*\* Fees will be established when authorizations are issued.



**(2) Definitions**

(a) **Amateur Radio.** Equipment used by individuals or groups who are licensed by FCC as amateur radio operators.

(b) **Broadcast Translator.** This category for use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. This category of use includes translators associated with public telecommunications service.

(c) **Cable and Subscription Television.** This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay period fees to receive the signal.

These systems normally operate as a commercial entity within an authorized franchise area.

(d) **Cellular.** This is a specialized service provided by commercial communicators which involves a mobile (vehicular) radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

(e) **Common Carrier Microwave Relay.** This use typically includes long line carriers which relay intrastate and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These uses are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

(f) **Industrial Microwave.** This use includes microwave communication equipment not regulated by the public utility commissions. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms.

(g) **Mobile Radio: Commercial Communications.** This includes communications equipment which primarily provides communications service to others. This use may be on either a for-profit or not-for-profit basis, and may or may not be regulated by a state public utility commission. The use requires an FCC license. Examples of mobile radio systems in this category are common carrier systems, community repeaters, specialized mobile radio systems (SMRs), private carrier two-way systems, and private carrier paging systems (PCPs). Some entities in this category own and lease building, tower, and related facility space as part of their business enterprise and may act as facility managers.

(h) **Mobile Radio: Internal Communications.** A private mobile radio system licensed by the Federal Communications Commission (FCC) and used by a single entity for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communications service is not sold to others and is limited to the user.

(i) **Natural Resource and Environmental Monitoring.** This use includes the transmission of telemetry data from a remote site to a central receiving station. Uses may

include weather stations, seismic stations, and snow measuring stations.

(j) **Passive Reflector.** Passive reflectors include various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

(k) **Personal/Private "Receive Only".** These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, including recreation residences. These facilities are personally owned and not operated for profit.

(l) **Radio Broadcast.** This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

(m) **Television Broadcast.** This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (Major and independent networks) who generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators.

**(3) Individual Authorizations Within Facilities Owned by Others**

When shared facility occupancy is authorized and each user has an authorization, the fee shall be 100% of the fee for each authorized use. There will be no \$75 discount.

**(4) Fees Under Multiple-User Authorizations**

To improve administration of communications sites, Forest Service policy provides for authorizing shared facility occupancies under a single authorization. By the terms and conditions, these authorization holders, rather than the Forest Service, authorize and administer the use of their facilities by others. Collection of Forest Service fees required under this type of authorization, are burdens of the holder.

Fees for such a multiple-user authorization: First use = 100% of fee schedule

All other uses are subject to a \$75 discount, except for additional frequencies in the case of mobile radios. These additional frequencies are charged the full rate per the following example.

Mobile radio use will be \$400 to \$1,200 as listed in the schedule for first frequency (less \$75 discount) plus \$200 for each additional frequency.

**(5) Discounts for Consolidation and Efficient Management**

There are situations where site or facility consolidation and efficient site management is intended to meet Forest Service objectives. In these situations, fees may be temporarily discounted to reflect the benefits received by the Forest Service. Annual fee discounts cannot exceed the holders cost or the annual fee for use of the site. The fee discounts must be considered on a case-by-case basis and approved by the Regional Forester.

Efficient site management may include the formation of user associations which assume administrative duties traditionally performed by the Forest Service.

**(6) Use of Government Owned Facilities**

In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by Section 7, Act of April 24, 1950 (Granger-Thye and FSM 2711.7).

**(7) Ancillary and Appurtenant Communication Users**

Ancillary uses are those on site uses which provide support or intertie with another communication system on the site. The fee would be for the highest valued use of the holder. For example, a holder has installed a mobile radio for internal communication which interties with an industrial microwave system in the same facility. In this case, the holder would be issued one authorization and charged a fee for industrial microwave.

Appurtenant uses are those communication uses incidental to another non-communication use of the National Forest System land, such as a ski resort or marina.

No fees will be charged for ancillary/appurtenant uses.

**(8) Phase-in of Fee Increases**

Fee increases for current holders will be phased-in at a rate of 25 percent of the previous year's fee with a minimum increase of \$100 per year. The 25 percent increase will continue until the current scheduled fee is reached.

For example: Current fee is \$300 and the scheduled fee is \$800.

|             | Phased-in fee | Scheduled fee* |
|-------------|---------------|----------------|
| Year 1..... | \$400         | \$800          |
| Year 2..... | 500           | 832            |
| Year 3..... | 625           | 865            |
| Year 4..... | 781           | 900            |
| Year 5..... | 936           | 936            |

\*Indexed using a 4 percent CPI-U.  
† \$100 min.

The phase-in does not apply to new holders or existing holders adding new uses.

**(9) Annual Fee Schedule Adjustment**

All communication use fees are subject to annual adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U) for July of the current year will be divided by the CPI-U for July of the previous year to yield a CPI-U multiplier



which will be used to annually update the Communications Use Fee Schedule.

#### (10) Other Methods of Establishing Fees

Fees for atypical sites (currently identified as Sandia Peak, Peralta Ridge, and Santa Catalina Mountain), categories of use which were not established in the schedule, or AM radio broadcast sites exceeding 1 acre will be determined on individual case basis.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Appraiser to determine fees for individual sites when market evidence, such as leases for similarly used sites, demonstrate the inapplicability of the fee schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional Appraiser establishes that the appraisal meets Forest service appraisal standards provides a better supported fee estimate than the market survey, and the report is approved.

Competitive bidding may be used to establish fees for new sites, (FSM 2712.2).

#### (11) Periodic Review of Fee Schedule

The Southwestern Region intends, by December 31, 1994, to review this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Fee waivers will also be reviewed at this time to ascertain holder's qualifications. Holders will be given an opportunity to provide data which might have a bearing on the review.

[FR Doc. 89-19855 Filed 8-22-89 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Pollution Abatement Costs and Expenditures.

Form Number: MA-200.

Agency Approval Number: 0607-0176.

Type of Request: Revision of a currently approved form.

Burden: 21,250 hours.

Number of Respondents: 17,000.

Avg hours per response: One hour and fifteen minutes.

Needs and Uses: This survey is used to determine what effect pollution spending has on the U.S. economy, to forecast growth, to measure productivity determinants, and to assist in the calculation of the gross national product. Government agencies, industrial forms, and trade associations are the primary users of the data.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 16, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-19822 Filed 8-22-89; 8:45 am]

BILLING CODE 3510-07-M

## Bureau of Export Administration

### Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held September 12, 1989, 9:30 a.m., Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect controls applicable to computer peripherals, components and related test equipment or technology.

#### Agenda

##### General Session

1. Opening Remarks by the Chairman & Commerce Representative.

2. Introduction of Members and

Visitors.

3. Annual Report and Annual Plan.

4. Discussion of Effective Utilization of TACs Document.

5. Review of Newly-Assigned Control List Items.

6. Discussion of 10MB Bulgarian Hard File.

7. Subcommittee Report on Workstations 8.

8. Forming Working Groups.

9. Discussion of G-COCOM and AT Findings.

10. Presentation of Papers or Comments by the Public.

## Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue NW., Room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: August 17, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89-19823 Filed 8-22-89; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

ACTION: Notice.



The Department of Defense has submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**Title, Applicable Form, and Applicable OMB Control Number:** Diagnostic Evaluation, Program for the Handicapped; DD Form 2451; and OMB Control Number 0704-0098.

**Type of Request:** Extension.

**Average Burden Hours/Minutes Per Response:** 1 Hour.

**Frequency of Response:** Once per year.

**Number of Respondents:** 840.

**Annual Burden Hours:** 840.

**Annual Responses:** 840.

**Needs and Uses:** The Diagnostic Evaluation, Program for the Handicapped Form is used to provide medical information for periodic reviews on benefits provided to physically handicapped or mentally retarded CHAMPUS beneficiaries. The form is used to determine whether services/ supplies provided under the Program for the Handicapped are cost effective and efficient.

**Affected Public:** Individuals or households, businesses or other for-profit, non profit institutions and small businesses or organizations.

**Frequency:** Continuing.

**Respondent's Obligation:** Required to obtain or retain a benefit.

**OMB Desk Officer:** Dr. J. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

**DOD Clearance Officer:** Ms. Pearl Rascoe-Harrison. Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: August 18, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19831 Filed 8-22-89; 8:45 am]

BILLING CODE 3810-01-M

#### Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

**ACTION:** Notice.

The Department of Defense has submitted to the Office of Management and Budget (OMB) for clearance the

following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**Title, Applicable Form, and Applicable OMB Control Number:** Public Official's Statement; CHAMPUS Form 769; and No OMB Control Number.

**Type of Request:** New Collection.

**Average Burden Hours/Minutes Per Response:** 2 hours.

**Frequency of Response:** Once per year (annually).

**Number of Respondents:** 2,500.

**Annual Burden Hours:** 5,000.

**Annual Responses:** 2,500.

**Needs and Uses:** The information collection requirement is necessary to obtain a public official's statement/certification that public facilities are/are not available or are/are not adequate to meet the needs of the handicapped dependent, and that public funds are/are not available for support of the needs of the handicapped dependent in alternative adequate facilities. This statement/certification must accompany all requests for CHAMPUS benefits under the program for the handicapped.

**Affected Public:** Individuals or households and State and local governments.

**Frequency:** Continuing.

**Respondent's Obligation:** Required to obtain or retain a benefit.

**OMB Desk Officer:** Dr. J. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

**DOD Clearance Officer:** Ms. Pearl Rascoe-Harrison. Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: August 18, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19831 Filed 8-22-89; 8:45 am]

BILLING CODE 3810-01-M

#### Department of the Army

##### Availability; Record of Decision for Remediation of Landfill No. 26, Hamilton Air Force Base, Novato, California

The Department of Army will release copies of the Record of Decision for the selection of the remedial alternatives for

the remediation of Landfill 26, Hamilton Air Force Base, Novato, California on August 17, 1989.

The Record of Decision specifically describes and addresses the selected remedial alternatives to clean up the landfill and the associated groundwater. The landfill was identified in the 1987 remedial investigation at Hamilton AFB as a site containing soil and refuse that, in some locations exceeds criteria developed by the State of California for identification of hazardous waste. The Feasibility Study released to the public on January 9, 1989, describes eight remedial alternatives for addressing contamination in the soil/refuse. These alternatives range from no action (requiring continued groundwater monitoring) to excavation and disposal of contaminated soil/refuse in appropriate commercial landfills and range in costs from \$2.8 million to \$53.5 million.

Remediation of soil/refuse will subsequently require localized groundwater remediation at the landfill. The Draft Feasibility Study described six groundwater remedial alternatives utilizing various processes ranging in cost from \$4.7 million to \$18 million. A wetlands mitigation plan will be required for the selected remedial alternatives and will undergo a subsequent review period.

The Record of Decision selects Fixation and Class II Closure of the Landfill (Alternative 4A) and Trickling Filter—Equalization (Alternative 6B) for the soil/refuse operable unit and groundwater operable unit, respectively. Here is a brief description of the alternatives:

**Landfill Soil-Refuse Operable Unit—Alternative 4A:** All contaminated soil/refuse exceeding levels appropriate for Class II landfill closure will be excavated and fixed with Portland cement or similar reagents. This fixed material would be redeposited into Landfill 26. A variance from the State of California for Class II closure would be required as fixed contaminants would still exceed Class II closure level requirements. The landfill would be capped and closed as a Class II landfill. Estimated cost—\$13.2 million.

**Groundwater Operable Unit—Alternative 6B:** Contaminated groundwater will be extracted from wells located both downgradient and within Landfill 26. Extracted water will pass through and oil/water separator to capture free hydrocarbons and then be treated in a trickling filter to remove trace organics. Treated effluent will be stored on-site in an equalization tank for pH control and time-released to a



sanitary treatment facility. Estimated cost—\$4.7 million.

The Corps of Engineers has been conducting environmental investigations at Hamilton AFB since May, 1985. To date, clean up actions on the property have included removal of containerized hazards (1985) and removal of 65 underground fuel structures (1986). Total expenditure for the Hamilton AFB cleanup and investigations to date have been \$13.8 million.

Copies of the Record of Decision for Landfill 26 may be obtained by calling the Sacramento District Corps of Engineers, (916) 551-2254, or by writing the Sacramento District Corps of Engineers, ATTN: CESPK-ED-M (ISS), 650 Capitol Mall, Sacramento, California 95814-4794. A limited number of copies of the Record of Decision will also be available at the Hamilton Army Airfield Installation Manager's Office, Building No. 501, Hamilton Army Airfield.

Lewis D. Walker,

Deputy Assistant Secretary of the Army  
(Environmental, Safety and Occupational Health), OASA(1&L).

[FR Doc. 89-19764 Filed 8-22-89; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

CFDA: 84.116A & B

### Invitation of Preapplications and Applications for New Awards under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1990

**Purpose of Program:** Provides grants to or enters into cooperative agreements with institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education and educational opportunities.

**Deadline for Transmittal of Preapplications:** October 17, 1989.

**Deadline for Transmittal of Final Applications:** March 2, 1990.

**Deadline for Intergovernmental Review:** May 2, 1990.

**Application Available:** August 25, 1989.

**Estimated Range of Awards:** \$5,000 to \$200,000.

**Estimated Size of Awards:** \$65,000.

**Estimated Number of Awards:** 70.

**Project Period:** 12 to 36 months.

**Available Funds:** The President's Budget for fiscal year 1990 includes \$11,856,000 for FIPSE. Of this amount, approximately \$4,250,000 would be available for an estimated 70 new awards under the Comprehensive

Program. The Congress has not yet completed action on the 1990 appropriation. The estimates above assume passage of the President's budget. These estimates, however, do not bind the Department of Education to a specific number of grants or to the amount of any grant.

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, and 85; and (b) the regulations for this program in 34 CFR part 630.

**Priorities:** The Secretary supports a broad range of programs that seek to improve postsecondary education. In accordance with 34 CFR 75.105(c)(1), the Secretary invites applications addressing the following priorities. However, the list is not meant to be exhaustive. Projects that do not meet any of these priorities are also eligible for support if they address other immediate problems or issues in postsecondary education. Applications are invited that seek to—

(1) Ensure that undergraduate curricula provide the knowledge and skills which an educated citizen needs, including knowledge of our intellectual and cultural heritage;

(2) Ensure that recent increases in access to postsecondary education are made meaningful by improving retention and completion rates without compromising program standards;

(3) Develop a learning friendly campus ethos;

(4) Improve the scope and quality of international education;

(5) Improve the quality of undergraduate education by raising academic standards for the bachelors degree, strengthening the liberal arts component of undergraduate professional programs, developing means of assessing and comparing programs and institutions, and recognizing and rewarding outstanding undergraduate teaching through hiring, tenure, and promotion policies;

(6) Reform the education of school teachers by making it easier for able people, who have earned degrees in fields other than education and who currently lack pedagogical training, to qualify as teachers, increasing current and prospective teachers' mastery of the subjects they teach, ensuring that prospective teachers have a solid grounding in the liberal arts, and attracting more people, of commitment and high intellectual ability to the teaching profession;

(7) Reform graduate education by fostering the teaching skills of Ph.D. candidates bound for careers in teaching, and broadening the social and

ethical perspectives of students in professional graduate programs generally;

(8) Improve financing and educational reform;

(9) Strengthen postsecondary educational institutions and organizations by providing incentives to develop the abilities of their leaders, administrators, faculty, and staff;

(10) Provide education for a changing economy by offering educational programs and services for workers, unemployed individuals, businesses, and communities;

(11) Develop educational uses of technology, including computers, television, and other electronic media.

**Selection Criteria:** Applications will be evaluated on the basis of the following selection criteria chosen from those listed in 34 CFR 630.32.

(a) **Significance for Postsecondary Education.** Each proposed project will be reviewed for its significance in improving postsecondary education by determining the extent to which it would—

(1) Address an important problem or need;

(2) Represent an improvement upon, or important departure from, existing practice;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching results through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) **Feasibility.** Each proposed project will be reviewed for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—



(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of the availability of other funding sources for the proposed activities.

For preliminary proposals, the selection criteria under significance are more important than those under feasibility and appropriateness, which are equally important. For final proposals, all criteria are equally important. Within each of these criteria, equal weight will be given to each of the subcriteria. In applying the criteria, the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgement of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

**FOR APPLICATIONS AND INFORMATION CONTACT:** The Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, SW., Room 3100, ROB-3, Washington, DC 20202. Telephone (202) 732-6001.

Authority: 20 U.S.C. 1135

Dated: August 16, 1989

James B. Williams,  
Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-19782 Filed 8-22-89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.116F]

**Invitation of Applications for New Awards under the Innovative Projects for Student Community Service Competition conducted by the Fund for the Improvement of Postsecondary Education**

*Purpose of Program:* Provides grants to institutions of higher education and other public and private, non-profit institutions and agencies to support projects encouraging students to participate in community service activities in exchange for educational

services or financial assistance in order to reduce the debt incurred by these students for attendance at institutions of higher education.

*Deadline for transmittal of Applications:* December 19, 1989.

*Deadline for Intergovernmental Review:* February 19, 1990.

*Applications Available:* August 25, 1989.

*Estimated Range of Awards:* \$10,000 to \$70,000.

*Estimated Size of Awards:* \$45,000.

*Estimated Number of Awards:* 12.

*Project Period:* 12 to 24 months.

*Available Funds:* The President's Budget for fiscal year 1990 does not include funds for this program. However, applications are invited to allow for sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for the program. The estimates above are based on the FY 1989 appropriation of \$1,454,000.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, and 85; and (b) the regulations for this program in 34 CFR part 630.

*Selection Criteria:* Applications will be evaluated on the basis of the following selection criteria chosen from those listed in 34 CFR 630.32.

(a) *Significance for Postsecondary Education.* Each proposed project will be reviewed for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purposes of the Innovative Projects for student Community Service Program, as referenced in 34 CFR 630.11;

(2) Address an important problem or need;

(3) Represent an important improvement upon, or important departure from, existing practice; and

(4) Achieve far-reaching results through improvements that will be useful in a variety of ways and a variety of settings.

(b) *Feasibility.* Each proposed project will be reviewed for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design,

including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating);

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* Each proposed project will be reviewed to determine whether support of the proposed project by the Secretary is appropriate in terms of the availability of other funding sources for the proposed activities.

The Secretary will give equal weight to the selection criteria on significance, feasibility, and appropriateness. Within each of these criteria, the Secretary will give equal weight to each of the subcriteria. In applying the criteria the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgement of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

**FOR APPLICATIONS AND INFORMATION**

**CONTACT:** The Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue SW., Room 3100, ROB-3, Washington, DC 20202. Telephone (202) 732-6001.

Authority: 20 U.S.C. 1135e-1

Dated: August 16, 1989.

James B. Williams,  
Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-19783 Filed 8-22-89; 8:45 am]

BILLING CODE 4000-01-M



**National Institute of Disability and Rehabilitation Research**

[CFDA No. 84.224A]

**Invitation of Applications for New Awards Under the State Grants Program for Technology-Related Assistance for Individuals With Disabilities for Fiscal Year 1990**

**AGENCY:** Department of Education.

**Purpose of Program:** This program provides financial assistance to States to assist each State to develop and implement a consumer-responsive, comprehensive statewide program of technology-related assistance for individuals with disabilities.

**Deadline for Transmittal of Applications:** December 1, 1989.

**Deadline for Intergovernmental Review:** February 1, 1990.

**Applications Available:** September 1, 1989.

**Available Funds:** \$5,000,000.

**Estimated Number of Awards:** 9.

**Estimated Range of Awards:** \$500,000-\$800,000.

**Estimated Average Award:** \$550,000.

**Project Period:** Up to 36 months, with the possibility of a 24-month extension.

**Note:** The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR), in 34 CFR parts 74, 75, 77, 79, 80 (with exceptions as noted in the following program regulations), 81, and 85, and (b) The regulations for this program in 34 CFR part 345 as published on August 9, 1989 at 54 FR 32770.

**FOR APPLICATIONS CONTACT:** National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC. 20202-2601, Attention: Peer Review Unit. Telephone: (202) 732-1141; deaf and hearing-impaired individuals may call (202) 732-1198 for TDD services.

**FOR FURTHER INFORMATION CONTACT:** Carol Cohen, National Institute on Disability and Rehabilitation Research, (202) 732-5066.

**Authority:** 29 U.S.C. 2201-2271.

**Dated:** August 17, 1989.

**Robert R. Davila,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 89-19781 Filed 8-22-89; 8:45 am]

**BILLING CODE 4001-01-M**

**NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES**

**DEPARTMENT OF JUSTICE**

**Agreement to Delegate Certain Civil Rights Compliance Responsibilities for Elementary and Secondary Schools and Institutions of Higher Education**

**A. Purpose**

Section 1-207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, and section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal Law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions as required in the Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs (28 CFR 42.401-42.415), increase the efficiency of compliance activity, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, by eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

**B. Delegation**

By this agreement the National Endowment for the Humanities and the National Endowment for the Arts designate the Department of Education as the agency responsible for the specific civil rights compliance duties, as enumerated below, with respect to elementary and secondary schools and institutions of higher education. Responsibility for the following covered nondiscrimination provisions are delegated:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d-4); and
2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

This agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice/Equal Employment Opportunity Commission regulation concerning procedures for

handling complaints of employment discrimination filed against recipients of Federal financial assistance. 28 CFR 42.601-42.613, 29 CFR 1691.1-1697.13, 48 FR 3570 (January 25, 1983). Complaints covered by the above regulation filed with the National Endowment for the Humanities or the National Endowment for the Arts against a recipient of Federal financial assistance, solely alleging employment discrimination against an individual, are to be referred directly to the Equal Employment Opportunity Commission (EEOC) by the National Endowment for the Humanities or the National Endowment for the Arts.

**C. Duties of the Department of Education**

The National Endowment for the Humanities and the National Endowment for the Arts assign the following compliance activities and duties to the Department of Education with respect to elementary and secondary schools and institutions of higher education. Specifically the Department of Education shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval and postapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported at least at the end of every fiscal year to the National Endowment for the Humanities and the National Endowment for the Arts.

2. Develop and use information for the routine, periodic monitoring of compliance by elementary and secondary schools and institutions of higher education with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

3. Perform, upon request by the National Endowment for the Humanities or the National Endowment for the Arts, preapproval reviews for which supplemental information or field reviews are necessary to determine compliance.

4. Conduct an effective program of postapproval reviews of recipients with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

5. Receive complaints alleging that recipients subject to this agreement have discriminated in violation of covered nondiscrimination provisions in



their programs or activities receiving Federal financial assistance, and attempt to obtain information necessary to make complaints complete, and investigate complete complaints.

6. Issue a written letter of findings of compliance or a letter of findings of noncompliance that (a) advises the recipient and, where appropriate, the complainant of the results of the postapproval review or complaint investigation, (b) provides recommendations, where appropriate, for achieving voluntary compliance, and (c) offers the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the state in which the applicant or recipient is located will be notified if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor be given an opportunity to secure compliance by voluntary means. The Department of Education promptly shall provide a copy of its letter of findings to the National Endowment for the Humanities or the National Endowment for the Arts and to the Assistant Attorney General for Civil Rights.

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. (a) If compliance cannot be voluntarily achieved, and the Department of Education does not fund the applicant or recipient, refer the matter to the National Endowment for the Humanities or the National Endowment for the Arts for its own independent action and notify the Assistant Attorney General for Civil Rights of the referral. (b) If compliance cannot be achieved and both the Department of Education and the National Endowment for the Humanities or the National Endowment for the Arts fund the applicant or recipient, initiate formal enforcement action. When the Department of Education initiates formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, provide the National Endowment for the Humanities or the National Endowment for the Arts with an opportunity to participate as a party in a joint administrative hearing. When the Department of Education initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the National Endowment for the Humanities or the National Endowment for the Arts of the referral.

9. Notify the National Endowment for the Humanities or the National

Endowment for the Arts and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and any action taken against the applicant or recipient.

#### **D. Duties of the National Endowment for the Humanities and the National Endowment for the Arts**

The National Endowment for the Humanities and the National Endowment for the Arts shall:

1. Issue and provide to the Department of Education all regulations, guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provisions and for the Department of Education to administer its responsibilities under this agreement.

2. Provide the Department of Education with information, technical assistance, and training necessary for the Department of Education to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of recipients receiving Federal financial assistance from the National Endowment for the Humanities or the National Endowment for the Arts, the types of assistance provided, compliance information solely in the National Endowment for the Humanities' or the National Endowment for the Arts' possession or control, and data on program eligibility and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance, as required by 28 CFR 42.407(b), that do not require supplemental information or field reviews. The reviews may require information to be supplied by the Department of Education. If the National Endowment for the Humanities or the National Endowment for the Arts requests the Department of Education to undertake an onsite review because it has shown it has reason to believe discrimination is occurring in a program or activity that is either receiving Federal financial assistance or that is the subject of an application, the National Endowment for the Humanities or the National Endowment for the Arts shall supply information necessary for the Department of Education to undertake such a review.

4. Refer to the Department of Education all complaints alleging discrimination under covered nondiscrimination provisions filed with the National Endowment for the Humanities or the National Endowment for the Arts against a recipient subject

to this delegation and determine, if possible, whether program involved receives Federal financial assistance from the National Endowment for the Humanities or the National Endowment for the Arts.

5. Where the Department of Education has notified the applicant or recipient in writing that compliance cannot be achieved by voluntary means and the Department of Education has referred the matter to the National Endowment for the Humanities or the National Endowment for the Arts, make the final compliance determination and:

(a) If the National Endowment for the Humanities or the National Endowment for the Arts wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify the Department of Education if the National Endowment for the Arts will either join as a party in Department of Education hearing or will conduct its own administrative hearing.

(b) When the National Endowment for the Humanities or the National Endowment for the Arts initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, the agency shall notify the Department of Education of the referral.

(c) If the National Endowment for the Humanities or the National Endowment for the Arts conducts its own hearing, the agency will notify the Department of Education and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and any action taken against the applicant or recipient. The agency may request the Department of Education to act as counsel in its administrative hearing.

(d) If the National Endowment for the Humanities or the National Endowment for the Arts neither initiates steps to deny or terminate Federal financial assistance nor refers the matter to the Department of Justice, the agency will notify the Department of Education and the Assistant Attorney General for Civil Rights, in writing, within 15 days after notification from the Department of Education that voluntary compliance cannot be achieved.

#### **E. Effects on Prior Delegations**

This agreement supersedes and replaces the delegation agreements regarding elementary and secondary schools and institutions of higher education entered into between the National Endowment for the Humanities and the National Endowment for the



Arts and the Department of Health, Education, and Welfare dated January 26, 1976 and November 19, 1975, respectively, and accepted by Department of Health, Education and Welfare on June 8, 1976.

#### F. Redlegation

Duties delegated herein to the Department of Education may be redelegated to the Department of Health and Human Services or the Veterans Administration. The Department of Education shall notify the National Endowment for the Humanities or the National Endowment for the Arts of any such redelegation prior to its effective date.

#### G. Approval

This agreement shall be signed by the Assistant Attorney General for Civil Rights. It shall be signed by all parties and become effective 30 days from publication in *Federal Register*.

#### H. Termination

This agreement may be terminated by the Department of Education, the National Endowment for the Humanities or the National Endowment for the Arts after written notice to the other agencies and to the Assistant Attorney General for Civil Rights.

Dated: March 1, 1989

Lynn V. Cheney,

*chairman National Endowment for the Humanities*

Dated: February 23, 1989.

Frank Hodsoll,

*Chairman National Endowment for the Arts.*

Dated: July 28, 1989.

James Turner

*Acting Assistant Attorney General Civil Rights Division Department of Justice*

Dated: April 27, 1989.

Lauro F. Cavazos,

*Secretary of Education.*

[FR Doc. 89-19780 Filed 8-22-89; 8:45 am]

BILLING CODE 4000-01-M

### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

[Docket Nos. ER89-601-000, et al.]

**Florida Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings**

August 15, 1989.

Take notice that the following filings have been made with the Commission:

#### 1. Florida Power & Light Company

[Docket No. ER89-601-000]

Take notice that on August 10, 1989, Florida Power & Light Company (FPL), tendered for filing a document entitled Amendment Number Ten to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Florida Power Corporation (Rate Schedule FERC No. 61).

FPL states that under Amendment Number Ten, FPL will transmit power and energy for Florida Power Corporation as is required in the implementation of its interchange agreement with Jacksonville Electric Authority.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately. FPL states that a copy of the filing was served on Florida Power Corporation.

*Comment date:* August 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 2. Washington Water Power Company

[Docket No. ER89-602-000]

Take notice that on August 10, 1989, Washington Water Power Company (WWP) tendered for filing eleven (11) agreements which have been terminated according to the terms of the individuals agreements.

*Comment date:* August 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 3. Southern California Edison Company

[Docket No. ER89-597-000]

Take notice that on August 9, 1989, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on July 25, 1989, by the respective parties: Edison-NCPA, Southern California Edison Company, and Northern California Power Agency.

The filed Agreement establishes the terms and conditions under which Interruptible Transmission Service will be proved to NCPA from Edison over certain Edison facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

*Comment date:* August 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 4. Nantahala Power & Light Company

[Docket No. ER89-595-000]

Take notice that on July 31, 1989, Nantahala Power & Light Company

(Nantahala) tendered for filing computations showing the calculation of the cost for the period July 1, 1988 to June 30, 1989 utilizing the billing format resulting from the New Fontana Agreement (NFA), the 1971 Apportionment Agreement as modified by the FERC, and the 1971 Power Purchase Contract with TVA.

*Comment date:* August 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 5. Gulf States Utilities Company

[Docket No. ER89-603-000]

Take notice that Gulf States Utilities Company (Gulf States) on August 11, 1989, tendered for filing rate schedule changes applicable to (1) the City of Newton, Texas, (2) the City of Kirbyville, Texas, (3) the City of Caldwell, Texas, (4) the City of Gueydan, Louisiana, (5) the City of Erath, Louisiana, (6) the City of Kaplan, Louisiana, and (7) Brazos Electric Power Cooperative, Inc. (collectively referred to as the "Wholesale Customers").

The rate schedule changes included Amended Agreements for Wholesale Electric Service ("Amended Agreements") for each of the Wholesale Customers. The Amended Agreements extend the terms of the wholesale electric service contracts between Gulf States and the Wholesale Customers through March 31, 2000. In consideration of the extension of the terms of the contracts, Gulf States is providing the Wholesale Customers, effective April 1, 1990, a rate reduction which is reflected in a new Rate Schedule WPS. The rate schedule changes also include various other miscellaneous agreements concerning substation facilities charges for Gueydan, Erath, and Kaplan, certain debts of Kaplan and the deferral of certain billings, and the purchase of power from the Southwest Power Administration by Brazos.

Gulf States states that the rates contained in Rate Schedule WPS were offered to all wholesale electric service customers of Gulf States that would agree to an extension of the term of their contract for wholesale electric service as described above.

Gulf States requests an effective date for the Amended Agreements of October 17, 1989. The effective date for Rate Schedule WPS under the terms of the Amended Agreements will be April 1, 1990. Gulf States requests an effective date for its letter agreement with Kaplan regarding the deferral of certain billings of July 20, 1989, and requests pursuant to section 35.11 of the Commission's regulations a waiver of the notice requirements of the Federal Power Act



and the Commission's regulations to allow the effective date.

Copies of the filing were served on all of Gulf States' customers purchasing wholesale electric service and the Louisiana Public Service Commission and the Public Utility Commission of Texas.

*Comment date:* August 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 6. Southern California Edison Company

[Docket No. ER89-598-000]

Take notice that on August 9, 1989, Southern California Edison Company (Edison) tendered for filing Amendment No. 1 to the Los Angeles-Edison Exchange Agreement (Amendment), designated Rate Schedule FERC No. 219, which has been executed by Edison and the Department of Water and Power of the City of Los Angeles (Los Angeles); Amendment No. 1 to the Los Angeles-Edison Exchange Agreement.

This Amendment modifies the Exchange Agreement to reflect the delay of the in-service date of the Devers-Palo Verde No. 2 Transmission Line (DPV2 Line) from June 1, 1990, to June 1, 1993. This Amendment includes the following:

- Los Angeles' right to build the line is delayed from July 1, 1989, to June 1, 1990, if Edison has not begun construction of the DPV2 Line by said date;
- Edison will make available to Los Angeles 368 MW of firm bidirectional transmission service between Palo Verde and Devers over the Devers-Palo Verde No. 1 Transmission Line (DPV1 Line);
- The 368 MW of firm bidirectional transmission service to Los Angeles between Devers and Sylmar will commence June 1, 1990;
- The 100 MW of firm bidirectional transmission service to Los Angeles between Palo Verde and Sylmar will commence June 1, 1990, and will terminate May 31, 2012;
- The 320/500 MW Northwest transmission exchange will commence June 1, 1990; and
- The Castaic Base Service is deemed to have started May 8, 1988. The Castaic Additional Service will commence January 1, 1990.

The Amendment is proposed to become effective when executed by the Parties and accepted for filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Los Angeles.

*Comment date:* August 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 7. PacifiCorp, doing business as Pacific Power & Light Company and Utah Power & Light Company

[Docket No. ER89-600-000]

Take notice that on August 10, 1989, PacifiCorp doing business as Pacific Power & Light Company and Utah Power & Light Company tendered for filing a Notice of Termination of PacifiCorp/Utah Power & Light Company Rate Schedule FERC No. 144.

Pacific requests an effective date of June 1, 1989, and therefore requests waiver of the Commission's notice requirements.

*Comment date:* August 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19772 Filed 8-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER89-596-000, et al.]

#### New England Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 14, 1989.

Take notice that the following filings have been made with the Commission:

#### 1. New England Power Company

[Docket No. ER89-596-000]

Take notice that New England Power Company (NEP) on August 1, 1989 tendered for filing a proposed change in its Service Agreement for Primary Service for Resale with the Narragansett Electric Company (Narragansett). The proposed change would increase the fixed credits allowed Narragansett on its purchased power billing by NEP in the amount of \$3,048,300 annually based

on the 12-month period ending December 31, 1990.

NEP requests an effective date of October 1, 1989. However, NEP requests that the amendment be suspended for three months to become effective January 1, 1990, in order to coincide with the effective date of its W-11 wholesale rate filing also filed on August 1, 1989.

*Comment date:* August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 2. Tucson Electric Power Company

[Docket No. ER89-599-000]

Take notice that on August 10, 1989, Tucson Electric Power Company (Tucson) tendered for filing an economy Energy Agreement (the Agreement) between Tucson and the City of Burbank; City of Glendale and the City of Pasadena. Tucson states that services may be provided under Service Schedule A to the Agreement entitled "Economy Energy Interchange."

Tucson requests an effective date of June 22, 1989, and therefore requests waiver of the Commission's notice requirements.

Tucson states that copies of the filing were served upon the City of Burbank; City of Glendale and City of Pasadena.

*Comment date:* August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 3. Kansas Power and Light Company

[Docket No. ER89-455-000]

Take notice that on August 8, 1989, the Kansas Power and Light Company (KPL) tendered for filing an amendment to its proposed changes in its schedule of rates and charges applicable to its partial requirements municipal customers located in the State of Kansas, as follows:

| Partial requirements municipal customer | FERC rate schedule No. |
|---|------------------------|
| City of Burlingame.....                 | 250                    |
| City of Clay Center.....                | 241                    |
| City of Ellingwood.....                 | 242                    |
| City of Herington.....                  | 209                    |
| City of Holton.....                     | 226                    |
| City of Larned.....                     | 240                    |
| City of Minneapolis.....                | 211                    |
| City of Osage City.....                 | 249                    |
| City of Sabetha.....                    | 235                    |
| City of St. John.....                   | 252                    |
| City of Stafford.....                   | 243                    |
| City of Sterling.....                   | 237                    |
| City of Wamego.....                     | 184                    |

KPL states that the amendment is necessary to reflect modifications to the proposed rate schedule requested by the Commission Staff.



Copies of the filing were served upon each affected customer and the Kansas Corporation Commission.

*Comment date:* August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 4. Pacific Gas and Electric Company

[Docket No. ER89-538-000]

Take notice that on August 4, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to its July 5, 1989 filing.

Copies of this filing were served upon CCSF, the California Public Utilities Commission, Turlock Irrigation District, Modesto Irrigation District and NI Industries.

*Comment date:* August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 5. Washington Water Power Company

[Docket No. ER89-385-000]

Take notice that on August 10, 1989, Washington Water Power Company (Washington) amended its filing in this docket for a firm capacity and energy sale which Washington refers to as a Letter Agreement between Washington and Sierra Pacific Power Company (SPP). Washington states that energy deliveries associated with capacity deliveries will be made available to SPP from December 27, 1988 through January 2, 1989 and January 23 through December 31, 1989.

Washington requests that the requirements of prior notice be waived and the effective date be made retroactive to December 27, 1988.

*Comment date:* August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### 6. Northeast Utilities Service Company

[Docket No. ER89-590-000]

Take notice that on August 4, 1989, Northeast Utilities Service Company as agent for the Connecticut Light and Power Company (CP&L) and Western Massachusetts Electric Company (WMECO) tendered for filing Notices of Termination of the following rate schedules:

| Rate schedule                    | Termination date |
|----------------------------------|------------------|
| CL&P Rate Schedule FERC No. 367. | July 7, 1989     |
| CL&P Rate Schedule FERC No. 384. | Do.              |
| CL&P Rate Schedule FERC No. 198. | Do.              |
| CVPS Rate Schedule FERC No. 98.  | Do.              |
| CL&P Rate Schedule FERC No. 357. | Do.              |
| CL&P Rate Schedule FERC No. 168. | Do.              |

| Rate schedule                     | Termination date |
|-----------------------------------|------------------|
| GMP Rate Schedule FERC No. 71.    | Do.              |
| CL&P Rate Schedule FERC No. 123.  | Do.              |
| LILCO Rate Schedule FERC No. 22.  | Do.              |
| CL&P Rate Schedule FERC No. 129.  | Do.              |
| WMECO Rate Schedule FERC No. 112. | Do.              |
| LILCO Rate Schedule FERC No. 23.  | Do.              |
| CL&P Rate Schedule FERC No. 147.  | Do.              |
| LILCO Rate Schedule FERC No. 25.  | Do.              |
| CL&P Rate Schedule FERC No. 212.  | Do.              |
| WMECO Rate Schedule FERC No. 177. | Do.              |
| LILCO Rate Schedule FERC No. 31.  | Do.              |
| CL&P Rate Schedule FERC No. 360.  | Do.              |
| CL&P Rate Schedule FERC No. 362.  | Do.              |
| PSNH Rate Schedule FERC No. 118.  | Do.              |

*Comment date:* August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

#### Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-19773 Filed 8-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1918-000 et al.]

#### Panhandle Eastern Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

#### 1. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1918-000]

August 11, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152-1642, filed in Docket No. CP89-1918-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Access Energy Corporation (Access), a marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport, on a firm basis, up to 5,000 Dt. equivalent of natural gas per day for Access. Panhandle states that construction of facilities would not be required to provide the proposed service.

Panhandle further states that the maximum day, average day, and annual transportation volumes would be approximately 5,000 Dt. equivalent, 5,000 Dt. equivalent and 1,825,000 Dt. equivalent respectively.

Panhandle advises that service under Section 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89-4316.

*Comment date:* September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 2. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1922-000]

August 11, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1922-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas on an interruptible basis, under its blanket certificate issued in Docket No. CP86-585-000, a maximum of 6,000 Dt. per day on behalf of Centran Corporation (Centran) a shipper, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle indicates that service commenced July 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4318 and estimates the volumes transported to be 6,000 Dt. on peak day.



5,000 Dt. on an average day and 1,825,000 Dt. on an annual basis. It is asserted that Panhandle would receive gas from various existing points of receipt on its system and would transport and redeliver the subject gas, less fuel and unaccounted line loss gas, to Northern Natural-Greensburg in Kiowa County, Kansas.

*Comment date:* September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 3. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1923-000]

August 14, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1923-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Amgas, Inc. (Amgas) under the blanket certificate issued in Docket No. CP89-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it proposes to transport up to 2,345 Dt per day on an interruptible basis on behalf of Amgas pursuant to a Transportation Agreement dated June 9, 1989 between Panhandle and Amgas (Transportation Agreement). The Transportation Agreement provides for Panhandle to receive gas from various existing points of receipt on its system. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Union Electric—Curryville in Pike County, Missouri.

Panhandle states that the estimated daily and estimated annual quantities would be 1,173 dt and 428,145 dt, respectively.

Panhandle further states it commenced service on July 1, 1989, as reported in Docket No. ST89-4332-000.

*Comment date:* September 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 4. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-1932-000]

August 14, 1989.

Take notice that on August 10, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 filed in Docket No. CP89-1932-000 a request pursuant to § 157.205 of the Regulations under the

Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texas Eastern Services Company (Texas Eastern), under the authorization issued in Docket No. CP86-435-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Texas Eastern, a marketer of natural gas, pursuant to an interruptible transportation agreement IT-1 dated July 10, 1989 (transportation agreement number 72741). The term of the transportation agreement is for one year from the date of initial delivery, and month to month thereafter unless terminated upon 30 days prior written notice to the other party. Northern proposes to transport on a peak day up to 50,000 MMBtu; on an average day up to 37,500 MMBtu; and on an annual basis 18,250,000 MMBtu of natural gas for Texas Eastern. It is stated that unless Northern agrees in writing to a lower rate, Texas Eastern shall pay Northern each month for transportation service at the maximum rates or charges in effect from time to time under Rate Schedule IT-1, or any effective superseding rate schedule on file with the Commission. Northern proposes to receive the subject gas from various existing receipt points on its system for transportation to various existing delivery points on its system. Northern avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on July 10, 1989, as reported in Docket No. ST89-4274-000.

*Comment date:* September 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 5. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1925-000]

August 14, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1925-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Mountain Iron

& Supply Company (Mountain Iron), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that pursuant to Transportation Agreement dated June 20, 1989, between Panhandle and Mountain Iron (Agreement), it would transport up to 2,000 dekatherms (dt) per day equivalent of natural gas, on an interruptible basis, for Mountain Iron. Panhandle further states that the Agreement provides for Panhandle to receive the natural gas from various existing points of receipt on its system in the states of Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma, Texas and Wyoming. Panhandle would then transport and redeliver the natural gas, less fuel used and unaccounted-for line loss, to the Village of Divernon in Sangamon County, Illinois.

Panhandle states that Mountain Iron has indicated that the estimated daily and estimated annual quantities would be 260 dt and 94,900 dt, respectively.

Panhandle states that it commenced the transportation of natural gas for Mountain Iron on July 1, 1989, as reported in Docket No. ST89-4325-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

*Comment date:* September 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 6. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1917-000]

August 14, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1917-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Access Energy Corporation (Access), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle requests authorization to transport, on a firm basis, up to a maximum of 4,880 dt equivalent of natural gas per day for Access pursuant to a transportation agreement dated July 1, 1989. Panhandle states that it would



receive the gas from Haven Pool in Reno County, Kansas and redeliver the gas, less fuel and unaccounted for line loss, to Central Illinois Public Service Company—Quincy in Adams County, Illinois. Panhandle indicates that the total volume of gas to be transported for Access on a peak day would be 4,880 dt; on an average day would be 4,880 dt; and on an annual basis would be 1,781,200 dt.

Panhandle states that it commenced the transportation of natural gas for Access on July 1, 1989, at Docket No. ST89-4317-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

*Comment date:* September 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 7. El Paso Natural Gas Company

[Docket No. CP89-1942-000]

August 15, 1989.

Take notice that on August 11, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978 filed in Docket No. CP89-1942-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Access Energy Corporation (Access), a marketer of natural gas, under El Paso's blanket certificate issued in Docket No. CP88-433-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport, on an interruptible basis, up to 211,000 MMBtu of natural gas per day for Access. El Paso states that construction of facilities would not be required to provide the proposed service.

El Paso further states that the maximum day, average day, and annual transportation volumes would be approximately 211,000 MMBtu, 52,750 MMBtu and 19,253,750 MMBtu respectively.

El Paso advises that service under § 284.223(a) commenced June 16, 1989, as reported in Docket No. ST89-4191.

*Comment date:* September 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 8. Natural Gas Pipeline Company of America

[Docket No. CP89-1952-000]

August 15, 1989.

Take notice that on August 15, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 2nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1952-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for American Central Gas Marketing Company (American Central), a marketer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated June 6, 1989, under its Rate Schedule ITS, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas for American Central. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from receipt points in New Mexico, Texas, offshore Texas, Oklahoma, Louisiana, offshore Louisiana, Illinois, Arkansas, Kansas, Nebraska and Wyoming, and would deliver the gas to a delivery point in Oklahoma.

Natural advises that service under § 284.223(a) commenced June 9, 1989, as reported in Docket No. ST89-4467-000. Natural further advises that it would transport 20,000 MMBtu on an average day and 7,300,000 MMBtu annually.

*Comment date:* September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 9. Tennessee Gas Pipeline Company

[Docket No. CP89-1941-000]

August 15, 1989.

Take notice that on August 11, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1941-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Panhandle Trading Company (Panhandle), a marketing company, under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that, pursuant to a transportation agreement dated June 21, 1989, as amended, it proposes to transport up to 100,000 Dt. per day of natural gas for Panhandle. Tennessee further states that the agreement provides for it to receive the gas from various receipt points located Offshore Louisiana and to redeliver the gas to various points of delivery along Tennessee's system. Panhandle has informed Tennessee that it expects to have the full 100,000 Dt. transported on an average day and, based thereon, estimates that 3,650,000 Dt. would be transported annually. Tennessee advises that, the service commenced July 2, 1989, as reported in Docket No. ST89-4308 (filed July 28, 1989), pursuant to § 284.223 of the Commission's Regulations.

*Comment date:* September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 10. Tennessee Gas Pipeline Company

[Docket No. CP89-1940-000]

August 15, 1989.

Take notice that on August 11, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) to construct and operate metering facilities for the delivery of natural gas to two existing customers at three delivery points under Tennessee's blanket certificate issued in Docket No. CP82-413-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is one file with the Commission and open to public inspection.

Tennessee proposes to replace existing metering facilities for the delivery of gas to Boston Gas Company at Arlington and Reading in Middlesex County, Massachusetts, and to Concord Gas Company at Concord, Merrimack County, New Hampshire. It is stated that the replacement facilities are required to more accurately measure daily variances in deliveries and to reflect the differences in delivery pressures. It is estimated that the cost of installing the facilities would be \$438,000. It is asserted that there would be no change in the authorized quantities delivered at the three points and that there would be no impact on Tennessee's peak day and annual deliveries.

*Comment date:* September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.



**11. Natural Gas Pipeline Company of America**

[Docket No. CP89-1943-000]

August 15, 1989.

Take notice that on August 11, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148 filed in Docket No. CP89-1943-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Shell Gas Trading Company (Shell), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on a firm basis up to 25,000 MMBtu, plus any additional volumes accepted pursuant to the overrun provision of Natural's Rate Schedule FTS, on behalf of Shell pursuant to a gas transportation agreement dated April 19, 1989, between Natural and Shell. Natural would receive the gas at various existing points of receipt on its system in Texas and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at various existing delivery points in Louisiana.

Natural further states that the estimated average daily and annual quantities would be 25,000 MMBtu and 9,125,000 MMBtu respectively. Service under § 284.223(a) commenced on July 1, 1989, as reported in Docket No. ST89-4238-000, it is stated.

*Comment date:* September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

**12. Northern Natural Gas Company Division of Enron Corp.**

[Docket No. CP89-1944-000]

August 15, 1989.

Take notice that on August 11, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1944-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Centran Corporation (Centran), a marketer, under the blanket certificate issued in Docket No. CP86-435-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with

the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated July 2, 1989, under its Rate Schedule IT-1, it proposes to transport up to 5,000 MMBtu per day equivalent of natural gas for Centran. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement. Northern also states that the proposed service may involve the compression of gas at its Fort Buford Compressor Station for delivery to Northern Border Pipeline Company.

Northern advises that service under § 284.223(a) commenced July 2, 1989, as reported in Docket No. ST89-4238-000 (filed July 21, 1989). Northern further advises that it would transport 3,750 MMBtu on an average day and 1,825,000 MMBtu annually.

*Comment date:* September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

**13. Paiute Pipeline Company**

[Docket No. CP89-1946-000]

August 15, 1989.

Take notice that on August 14, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-1946-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for KTM, Inc. (KTM), a marketer, under the blanket certificate issued in Docket No. CP87-309-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation agreement dated July 1, 1989, under its Rate Schedule IT-1, it proposes to transport up to 22,193 MMBtu per day equivalent of natural gas for KTM. Paiute states that it would transport the gas through its system from the existing interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border, and would redeliver the gas to KTM at the delivery points identified in the transportation agreement.

Paiute advises that service under § 284.223(a) commenced July 2, 1989, as reported in Docket No. ST89-4334-000 (filed July 31, 1989). Paiute further advises that it would transport 2,019

MMBtu on an average day and 737,000 MMBtu annually.

*Comment date:* September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

**14. Paiute Pipeline Company**

[Docket No. CP89-1945-000]

August 15, 1989.

Take notice that on August 14, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89103-4197, filed in Docket No. CP89-1945-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for High Sierra Hotel/Casino, (High Sierra), an end-user, under Paiute's blanket certificate issued in Docket No. CP87-307-000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation service agreement dated May 18, 1989, it proposes to receive up to 200 dt equivalent of natural gas per day from High Sierra at the Idaho-Nevada interconnection between Paiute and Northwest Pipeline Corporation and redeliver the gas at a specified point in Douglas County, Nevada. Paiute estimates that the peak day, average day, and annual volumes would be 200 million Btu, 33 million Btu, and 12,000 million Btu, respectively. It is indicated that on June 29, 1989, Paiute initiated a 120-day transportation service for High Sierra under § 284.223(a) as reported in Docket No. ST89-4226-000.

Paiute further states that no facilities need be constructed to implement the service. Paiute states that the primary term of the service would expire on October 31, 1991, but that the service would continue on a month-to-month basis until terminated by either party on thirty days written notice. Paiute proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT-1.

*Comment date:* September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

**15. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP89-1949-000]

August 15, 1989.

Take notice that on August 14, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No.



CP89-1949-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Vantage Pipeline Systems, Inc. (Vantage), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport, on an interruptible basis, up to 15,000 MMBtu equivalent of natural gas on a peak day, 11,250 MMBtu equivalent on an average day, and 5,475,000 MMBtu equivalent on an annual basis for Vantage. It is stated that Northern would receive the gas for Vantage's account at designated points on Northern's system and would deliver equivalent volumes at designated points on Northern's system. It is asserted that the service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced July 1, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4235.

*Comment date:* September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 16. United Gas Pipe Line Company

[Docket No. CP89-1950-000]

August 15, 1989.

Take notice that on August 14, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1950-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Exxon Corporation (Exxon), a producer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated June 9, 1989, under its Rate Schedule ITS, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas for Exxon. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple

delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89-4261-000 (filed July 24, 1989). United further advises that it would transport 103,000 MMBtu on an average day and 37,595,000 MMBtu annually.

*Comment date:* September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 17. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-1948-000]

August 15, 1989.

Take notice that on August 14, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1948-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Adobe Gas Marketing Co. (Adobe), under Northern's blanket certificate issued in Docket No. CP89-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern requests authorization to transport, on an interruptible basis, up to a maximum of 150,000 MMBtu of natural gas per day for Adobe, a marketer of natural gas, from receipt points located in Texas, Oklahoma, Kansas and Iowa to delivery points located in Texas, Oklahoma and Kansas. Northern anticipates transporting 112,500 MMBtu on an average day and an annual volume of 54,750,000 MMBtu.

Northern states that the transportation of natural gas for Adobe commenced July 1, 1989, as reported in Docket No. ST89-4236-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northern in Docket No. CP86-435-000.

*Comment date:* September 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

#### 18. El Paso Natural Gas Company

[Docket No. CP89-1909-000]

August 15, 1989.

Take notice that on August 4, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed an application in Docket No. CP89-1909-000, under sections 7(b) and 7(c) of the Natural Gas Act, for an optional certificate of public

convenience and necessity (OEC) authorizing (i) the construction and operation of certain facilities, with appurtenances; (ii) the firm transportation certificate and (iii) conditional pregranted abandonment of the facilities and related application on file with the Commission and open to public inspection.

The application states that El Paso proposes to expand its interstate pipeline system by up to 600 MMcf/d, primarily to meet principal market area of California. The expansion will serve shippers desiring firm transportation service for gas to be delivered at or in the vicinity of the western terminus of El Paso's mainline system at Topock, Arizona, including shippers engaged in enhanced oil recovery (EOR) operations in central California.

El Paso's expanded system would be connected at or near El Paso's Topock delivery point with the existing utility systems of Pacific Gas and Electric Company and Southern California Gas Company, as well as with the facilities to be constructed and operated by Mojave Pipeline Company, for the ultimate delivery of gas to shippers utilizing such systems, principally EOR and associated cogeneration users operating in the heavy oil fields in Kern County, California.

El Paso further states that its proposal has been prompted more specifically by several recent developments which evidence a substantial market interest in the facilities and service which are the subject of the instant application. Among these are: (i) The California Public Utilities Commission's ongoing investigation into the need for new interstate pipeline capacity to and within California which, while not yet complete, has thus far resulted in substantial market support for, and regulatory interest in, the construction of new interstate pipeline capacity and new firm interstate transportation for service not only to the EOR market, but also to enhance service levels to existing California gas consumers; (ii) the continuing market viability of the Mojave project; and (iii) El Paso's continuing discussions and negotiations with EOR and other gas consumers in California regarding new transportation services.

El Paso states that it has executed agreements with several EOR users which provide for long-term firm transportation commitments on El Paso's system up to an aggregate maximum quantity of approximately 225,000 MMBtu per day. El Paso states it is also presently engaged in ongoing negotiations with additional potential



firm shippers in California, including EOR users, regarding future firm transportation arrangements, and anticipates that additional commitments for firm transportation service on Applicant's system would be secured in the near future.

Because the total transportation market to be served by El Paso is not yet clear due to the ongoing nature of its negotiations, El Paso's application presents illustrative engineering studies based on three (3) design alternatives: The 200 Case presents the minimum expenditures by El Paso for additional facilities only on the San Juan Mainline System necessary to transport and deliver 200 MMcf/d; the 400 Case presents a design alternative which would permit the initial transportation and delivery of 400 MMcf/d, expandable to 600 MMcf/d; and the 600 Case reflects the facilities necessary to permit El Paso to transport and deliver 600 MMcf/d. The facilities El Paso will actually construct will match the level of firm commitments, but not in excess of the 600 MMcf/d level. Each of the design alternatives incorporates compatible engineering design considerations relative to the construction of Mojave Pipeline Company's proposed interstate pipeline system extending from Topock, Arizona, to Kern County, California. El Paso estimates that the facility cost for each of the three (3) cases are \$88,708,000, \$143,670,000 and \$201,035,000, respectively. El Paso seeks flexible authorization to construct and implement facilities necessary to provide its proposed service at the aggregate level ultimately secured through negotiations.

El Paso further states that it will perform the proposed firm transportation service under the provisions of its existing Rate Schedule T-3, contained in its FERC Gas Tariff, Original Volume No. 1-A, and consistent with the general terms and conditions contained in such tariff and applicable to this service. Use of the existing Rate Schedule T-3 rate structure involves rolling-in the incremental costs of the new construction with the existing rate base. El Paso states that its Rate Schedule T-3 includes a reservation charge, and also a one-part volumetric rate based on an assumed throughput of 95% of design capacity. El Paso states that its T-3 rate is cost-based and has prescribed maximum and minimum levels. In addition, El Paso states, its Rate Schedule T-3 has an established priority queue based on requests for future

service that was compiled on a first come, first served basis.

El Paso states that rolled-in treatment is appropriate in this case because (i) with the additional looping Applicant can reduce the existing isolated instances of underutilized mainline capacity and thus provide additional firm service to Topock without adversely affecting service to existing customers (enhances efficiency); and (ii) the additional throughput resulting would have a positive cost impact on existing customers. El Paso states that the new capacity would be available to those shippers in the firm queue and to any new shippers securing a position in such queue. El Paso states that it believes it would be able to accommodate the requirements of all potential firm shippers, irrespective of the position held in the queue.

El Paso states that the EOR customers provide a maximum assurance of constant throughput which is particularly valuable to El Paso's existing customers because an associated increase in the total system throughput redounds to the benefit of those customers. The application states that El Paso is cognizant that existing pipeline customers should not bear any of the present or future risk associated with recovery of the OEC facility costs. That risk, however minimal in this case, must rest on the pipeline and/or new shippers. El Paso states that it does not seek to avoid or evade the required assumption of this risk and is fully prepared to accept the responsibility for recovery (or non-recovery) of the capital and operational costs associated with the new facilities for which certificate authority is requested in this application.

With respect to the three (3) design alternatives, El Paso has included in its environmental assessment identification of those exceptions to the prior environmental report contained in the application filed November 8, 1985, as amended, in Docket No. CP86-197-000, *et al.* These exceptions do not, in the opinion of El Paso, constitute a major federal action which will necessitate another environmental impact statement.

El Paso has also requested, pursuant to § 157.103(f), conditional pregranted abandonment authority to abandon the services which are undertaken and/or the facilities which are constructed pursuant to the certificate authority requested herein.

*Comment date:* September 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

#### Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear to be represented at the hearing.

G. Any person of the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for



authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19774 Filed 8-22-89; 8:45 am]

BILLING CODE 6717-01-M

#### Idaho Operations Office

#### Intent To Negotiate Cooperative Agreement With Modell Development Corporation, Framingham, MA

**AGENCY:** Department of Energy.

**ACTION:** Intent to negotiate a cooperative agreement with the Modell Development Corporation, Framingham, MA.

**SUMMARY:** "Wet Oxidation System for Burning Waste and Low Grade Fuels" The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate, on a noncompetitive basis, a cooperative agreement for approximately \$100,000 and six months duration with the Modell Development Corporation (Modec), Framingham, MA. This action is prompted by Public Law 93-577, the Federal Nonnuclear Energy Research and Development Act of 1974. The project will evaluate technology relative to supercritical wet oxidation of water borne waste to destroy the water and to generate energy for industrial use. The Modec work involves preparation of a research unit design, fabrication plan, and test plan with companion cost estimates and schedules. The project could proceed through additional phases involving proof concept, pilot system development, and testing the pilot system at an industrial site. Should the participant proceed through the additional phases the DOE cost of the proposed agreement could increase to approximately \$1,500,000. The authority and justification for determination of authority and justification for determination of noncompetitive financial assistance is DOE Financial Assistance Rules 10 CFR Part 600.7(b)(2)(i); (A) The activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE, and for which competition for support would have a significant adverse effect on completion of the activity; and (D) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise and proprietary designs.

The work at Modec meets the purpose of Public Law 95-577 and addresses a public need for decreasing the

utilization of energy. Public response may be addressed to the contract specialist below.

**CONTACT:** U.S. Department of Energy, Idaho Operations Office, 785 DOE PLACE, Idaho Falls, Idaho 83402, Marshall C. Garr, Contract Specialist (208) 526-1536.

Dated: August 11, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89-19853 Filed 8-22-89; 8:45 am]

BILLING CODE 6450-01-M

#### ENVIRONMENTAL PROTECTION AGENCY

[PP 6G3341/T583; FRL 3634-4]

#### Chevron Chemical Co.; Renewal of a Temporary Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has renewed a temporary tolerance for residues of the herbicide 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate (lactofen) in or on the raw agricultural commodity cottonseed at 0.01 part per million (ppm) when applied post-directed. Use is limited to one post-directed application at a rate not to exceed 0.2 pound per acre applied after the cotton is at least 8 inches high, but not less than 90 days before harvest. Treated plants are not to be used for feed or forage.

**DATE:** This temporary tolerance expires April 11, 1991.

#### FOR FURTHER INFORMATION CONTACT:

By mail: Larry Schnaubelt, Acting Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557-1830.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the Federal Register of August 19, 1987 (52 FR 31083), stating that a temporary tolerance had been established for residues of the herbicide 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate (lactofen) in or on the raw agricultural commodity cottonseed at 0.01 part per million (ppm) when applied post-directed. Use is limited to one post-directed application at a rate not to exceed 0.2 pound per acre applied after the cotton is at least 8 inches high, but not less than 90 days before harvest.

Treated plants are not to be used for feed or forage. This tolerance is renewed in response to pesticide petition (PP) 6G3341, submitted by Chevron/Valent Chemical Co., 15049 San Pablo Ave., P.O. Box 4010, Richmond, CA 94804-0010.

The company has requested a 1-year renewal of a temporary tolerance for residues of the herbicide to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 239-EUP-115, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Chevron/Valent Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires April 1, 1991. Residues not in excess of this amount remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance



requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: August 7, 1989.

Herbert S. Harrison,  
Acting Director, Registration Division, Office  
of Pesticide Programs.  
[FR Doc. 89-19821 Filed 8-22-89; 8:45 am]  
BILLING CODE 6560-50-M

[OPP-30277B; FRL 3634-2]

### Merck and Co., Inc.; Approval of Pesticide Product Registration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application submitted by MSD Division of Merck and Co., Inc., to conditionally register the pesticide product Zephyr 0.15 EC involving a changed use pattern pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

#### FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (H7505C), Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM# 2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-557-2400).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the *Federal Register* of March 25, 1987 (52 FR 9537), which announced that MSD AGVET, Division of Merck and Co., Rahway, NJ 07065, had submitted an application to conditionally register the pesticide product Agrimec™ 0.15 EC an insecticide/miticide, containing the active ingredient avermectin B<sub>1</sub> [A mixture of avermectins containing >80% avermectin B<sub>1a</sub> (5-O-demethyl avermectin A<sub>1a</sub>) and <20% avermectin B<sub>1b</sub> (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A<sub>1a</sub>)] 2.0 percent; an active ingredient involving a changed use pattern of the product.

The application for "Zephyr 0.15 EC" formerly "Agrimec™ 0.15 EC" was approved on March 23, 1989, for restricted use, to include in its presently registered use, a new use to control mites on cotton. The product was assigned EPA Registration No. 618-97.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of avermectin B<sub>1</sub> and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of avermectin B<sub>1</sub> during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

This registration has been issued on the condition that the following information is submitted by the listed dates:

| Type of submission   | Deadline for submission |
|--|-------------------------|
| 1. Fish life cycle test (sec. 72-5).   | October 1991.           |
| 2. Mesocosm aquatic study (sec. 72-7).   | October 1991.           |
| 3. Simulated mammal field test (sec. 71-5).  | October 1991.           |
| 4. Soil absorption/desorption (sec. 163-1).  | June 1990.              |
| 5. The results of analysis of the remaining soil core samples for the field dissipation study previously submitted (sec. 164-1). | July 24, 1989.          |

**Note:** See 40 CFR 158.20(c) for explanation and availability of guidelines.

This conditional registration will automatically expire on March 31, 1992.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of this pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on avermectin B<sub>1</sub>.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (H7505C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M Street SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM# 2, Arlington, VA 22202 (703-557-3262). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M Street SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: August 2, 1989.

Douglas D. Campt,  
Director, Office of Pesticide Programs.  
[FR Doc. 89-19819 Filed 8-22-89; 8:45 am]  
BILLING CODE 6560-50-M

[OPP-180815; FRL 3634-3]

### Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted specific exemptions for the control of various pests to the 23 States as listed below. Four crisis exemptions were initiated by various States, and one by the United States Department of Agriculture for the month of April. These exemptions, issued during the month of May, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

**DATES:** See each specific and crisis exemption for its effective date.



**FOR FURTHER INFORMATION CONTACT:**

See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

**SUPPLEMENTARY INFORMATION:** EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of permethrin on southern peas to control the insect cowpea curculio; May 22, 1989, to October 31, 1989. (Robert Forrest)

2. Arizona Commission of Agriculture and Horticulture for the use of acephate on citrus to control citrus thrips; May 17, 1989, to June 30, 1989. (Gene Asbury)

3. Arkansas State Plant Board for the use of imazethpyr (Pursuit) on southern peas to control puncture vines; May 22, 1989, to July 31, 1989. (Robert Forrest)

4. Arkansas State Plant Board for the use of sethoxydim on snap beans to control Johnsongrass; May 30, 1989, to July 31, 1989. (Susan Stanton)

5. Arkansas State Plant Board for the use of triclopyr on rice to control broadleaf weeds; May 15, 1989, to August 1, 1989. (Gene Asbury)

6. Arkansas State Plant Board for the use of metalaxyl on blueberries to control phytophthora root rot; May 1, 1989, to December 1, 1989. (Susan Stanton)

7. California Department of Agriculture for the use of azinphos-methyl on pomegranates to control filbert moths; May 9, 1989, to June 30, 1989. (Gene Asbury)

8. California Department of Food and Agriculture for the use of triadimefon on fresh market and processing tomatoes to control powdery mildew; May 5, 1989, to March 31, 1990. (Libby Pemberton)

9. California Department of Food and Agriculture for the use of fenamiphos on walnut trees to control nematodes; May 17, 1989, to June 15, 1989. (Libby Pemberton)

10. California Department of Food and Agriculture for the use of fenbutatin-oxide on mixed melons, watermelons and squash to control spider mites; May 22, 1989, to October 15, 1989. (Robert Forrest)

11. Colorado Department of Agriculture for the use of fenvalerate on small grains to control cutworms; May 11, 1989, to July 1, 1989. Colorado has initiated a crisis exemption for this use. (Libby Pemberton)

12. Colorado Department of Agriculture for the use of cypermethrin

on dry bulb onions to control onion thrips; May 5, 1989, to August 15, 1989. (Gene Asbury)

13. Georgia Department of Agriculture for the use of permethrin on southern peas to control the insect cowpea curculio; May 22, 1989, to October 31, 1989. Georgia has initiated a crisis exemption for this use. (Robert Forrest)

14. Hawaii Department of Agriculture for the use of amdro on pineapples to control fire ants; May 22, 1989, to May 22, 1990. (Robert Forrest)

15. Idaho Department of Agriculture for the use of pendimethalin on dry bulb onions to control weeds; May 17, 1989, to May 31, 1989. (Jim Tompkins)

16. Idaho Department of Agriculture for the use of avermectin B<sub>1</sub> on pears to control spider mites; May 30, 1989, to September 1, 1989. (Libby Pemberton)

17. Illinois Department of Agriculture for the use of sethoxydim on snap beans to control Johnsongrass; May 22, 1989, to August 15, 1989. (Susan Stanton)

18. Louisiana Department of Agriculture and Forestry for the use of triclopyr on rice to control broadleaf weeds; May 15, 1989, to August 1, 1989. (Gene Asbury)

19. Michigan Department of Agriculture for the use of fenarimol on tart cherries to control cherry leaf spot and powdery mildew; May 30, 1989, to August 15, 1989. (Susan Stanton)

20. Michigan Department of Agriculture for the use of carboxin (Pro-Gro) on onion seeds to control onion smut diseases; May 30, 1989, to May 1, 1990. (Gene Asbury)

21. Michigan Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 5, 1989, to August 30, 1989. (Gene Asbury)

22. Michigan Department of Agriculture for the use of pendimethalin on dry bulb onions to control specified weeds; May 3, 1989, to June 30, 1989. (Jim Tompkins)

23. Minnesota Department of Agriculture for the use of sethoxydim on snap beans to control wild proso millet; May 17, 1989, to August 31, 1989. (Susan Stanton)

24. Minnesota Department of Agriculture for the use of terbufos on rape and mustard seeds to control flea beetles; May 26, 1989, to June 31, 1989. (Gene Asbury)

25. Minnesota Department of Agriculture for the use of carboxin (Pro-Gro) on onion seedlings to control onion smut disease; May 1, 1989, to April 1, 1990. (Gene Asbury)

26. Minnesota Department of Agriculture for the use of pendimethalin on onions to control weeds; May 9, 1989, to June 30, 1989. (Jim Tompkins)

27. Mississippi Department of Agriculture and Commerce for the use of triclopyr on rice to control broadleaf weeds; May 15, 1989, to August 1, 1989. (Gene Asbury)

28. Montana Department of Agriculture for the use of clopyralid on peppermint and spearmint to control horseweed, salsify, Canada thistle and other weeds; May 1, 1989, to June 1, 1989. (Gene Asbury)

29. New York Department of Environmental Conservation for the use of pendimethalin on dry bulb onions to control specified weeds; May 3, 1989, to June 30, 1989. (Jim Tompkins)

30. North Dakota Department of Agriculture for the use of fenoxaprop-ethyl on hard red spring wheat to control foxtail; May 1, 1989, to July 15, 1989. (Libby Pemberton)

31. North Dakota Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; May 17, 1989, to August 31, 1989. (Susan Stanton)

32. Oregon Department of Agriculture for the use of pendimethalin on onions grown on mineral soils to control weeds; May 9, 1989 to May 31, 1989. (Jim Tompkins)

33. Oregon Department of Agriculture for the use of sethoxydim on green peas to control annual ryegrass and barnyardgrass; May 1, 1989, to May 31, 1989. (Susan Stanton)

34. Oregon Department of Agriculture for the use of tridiphane on sweet corn to control wild proso millet; May 3, 1989, to July 20, 1989. (Robert Forrest)

35. Oregon Department of Agriculture for the use of pendimethalin on dry bulb onions to control specified weeds; May 3, 1989, to June 30, 1989. (Jim Tompkins)

36. Oregon Department of Agriculture for the use of fluzifop-butyl on mint to control quackgrass and green foxtail; May 5, 1989, to June 15, 1989. (Susan Stanton)

37. Oregon Department of Agriculture for the use of sethoxydim on snap beans to control wild proso millet; May 11, 1989, to July 10, 1989. (Susan Stanton)

38. Puerto Rico Department of Agriculture for the use of hydramethylnon (Amdro) on coffer to control fire ants; May 22, 1989, to February 28, 1990. (Robert Forrest)

39. South Dakota Department of Agriculture for the use of fenvalerate on winter wheat to control cutworms; May 11, 1989, to July 1, 1989. (Libby Pemberton)

40. South Dakota Department of Agriculture for the use of Harmony on oats to control broadleaf weeds; May 15, 1989, to June 30, 1989. (Robert Forrest)



41. Tennessee Department of Agriculture for the use of sethoxydim on snap beans to control Johnsongrass; May 22, 1989, to July 31, 1989. (Susan Stanton)

42. Utah Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 5, 1989, to September 30, 1989. (Gene Asbury)

43. Virginia Department of Agriculture and Consumer Services for the use of clomazone on snap beans, cucumbers, and squash to control annual broadleaf weeds; May 22, 1989, to September 30, 1989. (Libby Pemberton)

44. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sethoxydim on snap beans to control wild proso millet, volunteer corn, and quackgrass; May 22, 1989, to August 31, 1989. (Susan Stanton)

45. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of pendimethalin on dry bulk onions to control specified weeds; May 3, 1989, to June 30, 1989. (Jim Tompkins)

46. Wisconsin Department of Agriculture, Trade and Consumer Protection for the use of oxyfluorfen on horseradish to control broadleaf weeds; May 5, 1989, to June 30, 1989. A notice of Solicitation of public comment was published in the *Federal Register* of March 1, 1989 (54 FR 8594); no comments were received. Oxyfluorfen was referred to special review in January of 1980, because pesticide products containing oxyfluorfen as an active ingredient were shown to contain perchlorethylene (PCE), a liver carcinogen in B6C3F1 mice. A Special Review process was completed on June 30, 1982, and the decision was made to continue registration of the herbicide subject to certain restrictions (on PCE) pertaining to formulation of the product (47 FR 27118). (Gene Asbury)

Crisis exemptions were initiated by the:

1. Illinois Department of Agriculture on May 1, 1989, for the use of sethoxydim on peas to control volunteer wheat and rye. This program has ended. (Susan Stanton)

2. Minnesota Department of Agriculture on May 30, 1989, for the use of fenoxaprop-ethyl on wheat to control foxtail, wild proso millet, and wild oats. This program has ended. (Libby Pemberton)

3. Texas Department of Agriculture on May 12, 1989, for the use of chlorothalonil on mushrooms to control fungal diseases. Since it was anticipated that this program would be needed for more than 15 days, Texas has requested a specific exemption to continue it. The

need for this program is expected to last until May 11, 1990. (Susan Stanton)

4. Texas Department of Agriculture on May 17, 1989, for the use of sodium chlorate on winter wheat to control weeds. This program has ended. (Susan Stanton)

6. United States Department of Agriculture on April 25, 1989, for the use of methyl bromide on chayote to control various plant pests. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this program is expected to last until April 24, 1992. (Libby Pemberton)

Authority: 7 U.S.C. 136.

Dated: August 7, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-19820 Filed 8-22-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Comments Invited on Chicago Metropolitan Area Regional Public Safety Plan

August 15, 1989.

The Commission has received the public safety radio communications plan for the Chicago Metropolitan area (Region 54).

In accordance with the Commission's Report and Order in General Docket 87-112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of *Federal Register* publication of this public notice to file comments and fifteen days to reply to any comments filed. (See Report and Order, General Docket 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87-112, Region 54 consists of the following counties: Winnebago, McHenry, Cook, Kane, Kendall, Grundy, Boone, Lake, Dupage, De Kalb, Will, and Kankakee, Illinois; Kenosha, Milwaukee, Washington, Dodge, Walworth, Jefferson, Racine, Ozaukee, Waukesha, Dane, and Rock, Wisconsin; Lake, La Porte, Jasper, Starke, St. Joseph, Porter, Newton, Pulaski, Marshall, and Elkhart, Indiana; and Ottawa, Kent, Van Buren, Kalamazoo, Barry, Muskegon, Allegan, Berrien, Cass, and St. Joseph, Michigan. General Docket 87-112, 3 FCC Rcd 2113 (1988).

Comments should be clearly identified as submissions to General Docket 89-363, Chicago Metropolitan Area—Region

54, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Fred Thomas, Office of Engineering and Technology, (202) 653-8112, or Maureen Cesaitis, Private Radio Bureau, (202) 632-6497.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-19799 Filed 8-22-89; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Emergency Food and Shelter Program Allocations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: On June 30, 1989, the President signed Public Law 101-45, the Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplemental and Correcting Enrollment Errors Act of 1989, which made available an additional \$12 million for the Emergency Food and Shelter Program. This notice announces allocations made by the Emergency Food and Shelter National Board to jurisdictions from that award. These funds are to be distributed to local private voluntary organizations and units of local government for the purpose of delivering emergency food and shelter to needy individuals in localities determined by the Board as being in high need.

These awards are in addition to the previous allocations listing (*Federal Register*, Vol. 54, No. 125, pp. 27705-27734, June 30, 1989) made under Public Law 100-404 for Phase VII (Fiscal Year 1989) of the Emergency Food and Shelter National Board Program. The program was authorized by Public Law 100-77, the Stewart B. McKinney Homeless Assistance Act.

DATE: The supplemental award to the National Board was made on July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Francis X. McCarthy, Individual Assistance Division, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3652.



**SUPPLEMENTARY INFORMATION:****Allocation Formula**

The following jurisdictions that qualified for awards were chosen based on the original Phase VII criteria:

1. Most current 12-month national unemployment rates.
2. Jurisdictions with a minimum of 1,000 people unemployed.

3. Jurisdictions with 18,000+ unemployed and a 4.9% rate of unemployment.

4. Jurisdictions with 1,000 to 17,999 unemployed and a 7.5% rate of unemployment.

5. Jurisdictions with 1,000 or more unemployed and an 11% rate of poverty.

**Note:** Due to the urgency of this legislation, and the amount of funds involved for a

national program, the National Board did not fund the State Set-Aside Committees with this appropriation. Also, unlike the original awards (under Pub. Law 100-404), no State minimum was established.

Dated: August 14, 1989.

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support.*

**EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS**

|  | Public Law<br>100-404 | Public Law<br>101-45 |
|--|-----------------------|----------------------|
| <b>Alabama:</b>                              |                       |                      |
| 7-0032-00 Baldwin County.....                | 52,616.00             | 6,639.00             |
| 7-0038-00 Blount County.....                 | 21,412.00             | 2,702.00             |
| 7-0044-00 Calhoun County.....                | 64,499.00             | 8,138.00             |
| 7-0050-00 Chilton County.....                | 22,162.00             | 2,796.00             |
| 7-0054-00 Clarke County.....                 | 22,911.00             | 2,891.00             |
| 7-0060-00 Coffee County.....                 | 19,008.00             | 2,398.00             |
| 7-0062-00 Colbert County.....                | 37,912.00             | 4,783.00             |
| 7-0068-00 Covington County.....              | 21,813.00             | 2,752.00             |
| 7-0072-00 Cullman County.....                | 40,943.00             | 5,166.00             |
| 7-0074-00 Dale County.....                   | 22,928.00             | 2,893.00             |
| 7-0076-00 Dallas County.....                 | 50,282.00             | 6,344.00             |
| 7-0078-00 De Kalb County.....                | 36,291.00             | 4,579.00             |
| 7-0080-00 Elmore County.....                 | 21,743.00             | 2,743.00             |
| 7-0082-00 Escambia County.....               | 27,458.00             | 3,464.00             |
| 7-0084-00 Etowah County.....                 | 60,073.00             | 7,579.00             |
| 7-0088-00 Franklin County.....               | 24,984.00             | 3,152.00             |
| 7-0098-00 Houston County.....                | 37,250.00             | 4,700.00             |
| 7-0102-00 Jackson County.....                | 35,211.00             | 4,443.00             |
| 7-0104-00 Jefferson County.....              | 358,087.00            | 45,180.00            |
| 7-0110-00 Lauderdale County.....             | 48,139.00             | 6,074.00             |
| 7-0112-00 Lawrence County.....               | 24,322.00             | 3,069.00             |
| 7-0114-00 Lee County.....                    | 33,347.00             | 4,207.00             |
| 7-0116-00 Limestone County.....              | 32,058.00             | 4,045.00             |
| 7-0122-00 Madison County.....                | 112,498.00            | 14,194.00            |
| 7-0128-00 Marion County.....                 | 26,099.00             | 3,293.00             |
| 7-0130-00 Marshall County.....               | 51,031.00             | 6,439.00             |
| 7-0132-00 Mobile County.....                 | 284,076.00            | 35,842.00            |
| 7-0138-00 Montgomery County.....             | 111,244.00            | 14,036.00            |
| 7-0142-00 Morgan County.....                 | 63,540.00             | 8,017.00             |
| 7-0152-00 Russell County.....                | 26,029.00             | 3,284.00             |
| 7-0154-00 St. Clair County.....              | 21,081.00             | 2,660.00             |
| 7-0156-00 Shelby County.....                 | 31,883.00             | 4,023.00             |
| 7-0160-00 Talladega County.....              | 51,153.00             | 6,454.00             |
| 7-0162-00 Tallapoosa County.....             | 20,698.00             | 2,611.00             |
| 7-0164-00 Tuscaloosa County.....             | 68,836.00             | 8,685.00             |
| 7-0168-00 Walker County.....                 | 49,045.00             | 6,188.00             |
| 7-0174-00 Winston County.....                | 20,437.00             | 2,579.00             |
| 7-0176-00 State Set-Aside Committee, AL..... | 166,115.00            | 0.00                 |
| <b>Total.....</b>                            | <b>2,219,214.00</b>   | <b>259,042.00</b>    |
| <b>Alaska:</b>                               |                       |                      |
| 7-0188-00 Anchorage Borough.....             | 154,748.00            | 19,524.00            |
| 7-0196-00 Fairbanks North Star Boro.....     | 70,318.00             | 8,872.00             |
| 7-0202-00 Kenai Peninsula Borough.....       | 45,142.00             | 5,696.00             |
| 7-0210-00 Matanuska-Susitna Census.....      | 45,560.00             | 5,748.00             |
| 7-0232-00 State Set-Aside Committee, AK..... | 54,081.00             | 0.00                 |
| <b>Total.....</b>                            | <b>369,849.00</b>     | <b>39,840.00</b>     |
| <b>Arizona:</b>                              |                       |                      |
| 7-0242-00 Apache County.....                 | 40,926.00             | 5,164.00             |
| 7-0244-00 Cochise County.....                | 49,742.00             | 6,276.00             |
| 7-0246-00 Coconino County.....               | 59,080.00             | 7,454.00             |
| 7-0248-00 Gila County.....                   | 25,907.00             | 3,269.00             |
| 7-0256-00 Maricopa County.....               | 854,788.00            | 107,848.00           |
| 7-0268-00 Mohave County.....                 | 36,849.00             | 4,649.00             |
| 7-0270-00 Navajo County.....                 | 56,937.00             | 7,184.00             |
| 7-0272-00 Pima County.....                   | 258,099.00            | 32,564.00            |
| 7-0276-00 Pinal County.....                  | 64,255.00             | 8,107.00             |
| 7-0278-00 Santa Cruz County.....             | 20,472.00             | 2,583.00             |
| 7-0280-00 Yavapai County.....                | 36,518.00             | 4,607.00             |
| 7-0282-00 Yuma County.....                   | 141,158.00            | 17,810.00            |
| 7-0284-00 State Set-Aside Committee, AZ..... | 12,460.00             | 0.00                 |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|  | Public Law<br>100-404 | Public Law<br>101-45 |
|--|-----------------------|----------------------|
| Total.....                                   | 1,657,191.00          | 207,515.00           |
| Arkansas:                                    |                       |                      |
| 7-0310-00 Benton County.....                 | 33,643.00             | 4,245.00             |
| 7-0322-00 Clark County.....                  | 18,311.00             | 2,310.00             |
| 7-0334-00 Craighead County.....              | 33,817.00             | 4,267.00             |
| 7-0336-00 Crawford County.....               | 24,583.00             | 3,102.00             |
| 7-0338-00 Crittendon County.....             | 35,960.00             | 4,537.00             |
| 7-0348-00 Faulkner County.....               | 40,664.00             | 5,131.00             |
| 7-0354-00 Garland County.....                | 46,975.00             | 6,179.00             |
| 7-0358-00 Greene County.....                 | 22,998.00             | 2,902.00             |
| 7-0362-00 Hot Spring County.....             | 24,409.00             | 3,080.00             |
| 7-0366-00 Independence County.....           | 23,521.00             | 2,968.00             |
| 7-0370-00 Jackson County.....                | 20,384.00             | 2,572.00             |
| 7-0372-00 Jefferson County.....              | 54,654.00             | 6,896.00             |
| 7-0390-00 Lonoke County.....                 | 20,141.00             | 2,541.00             |
| 7-0396-00 Miller County.....                 | 25,298.00             | 3,192.00             |
| 7-0398-00 Mississippi County.....            | 49,062.00             | 6,190.00             |
| 7-0408-00 Ouachita County.....               | 20,437.00             | 2,579.00             |
| 7-0412-00 Phillips County.....               | 27,458.00             | 3,464.00             |
| 7-0416-00 Poinsett County.....               | 17,858.00             | 2,253.00             |
| 7-0420-00 Pope County.....                   | 25,838.00             | 3,260.00             |
| 7-0424-00 Pulaski County.....                | 211,581.00            | 26,695.00            |
| 7-0432-00 St. Francis County.....            | 47,076.00             | 5,940.00             |
| 7-0434-00 Saline County.....                 | 38,190.00             | 4,818.00             |
| 7-0440-00 Sebastian County.....              | 54,916.00             | 6,929.00             |
| 7-0450-00 Union County.....                  | 28,643.00             | 3,614.00             |
| 7-0454-00 Washington County.....             | 41,727.00             | 5,265.00             |
| 7-0456-00 White County.....                  | 47,477.00             | 5,990.00             |
| 7-0462-00 State Set-Aside Committee, AR..... | 224,915.00            | 0.00                 |
| Total.....                                   | 1,262,536.00          | 130,919.00           |
| California:                                  |                       |                      |
| 7-0464-00 Fresno County/City.....            | 543,813.00            | 68,613.00            |
| 7-0634-00 Alameda County.....                | 330,787.00            | 41,735.00            |
| 7-0646-00 Oakland County.....                | 212,469.00            | 26,607.00            |
| 7-0654-00 Butte County.....                  | 94,100.00             | 11,873.00            |
| 7-0660-00 Contra Costa County.....           | 320,681.00            | 40,460.00            |
| 7-0676-00 Glenn County.....                  | 17,911.00             | 2,260.00             |
| 7-0678-00 Humboldt County.....               | 63,575.00             | 8,021.00             |
| 7-0680-00 Imperial County.....               | 157,169.00            | 19,830.00            |
| 7-0684-00 Kern County.....                   | 397,863.00            | 50,198.00            |
| 7-0688-00 Kings County.....                  | 55,613.00             | 7,017.00             |
| 7-0690-00 Lake County.....                   | 29,549.00             | 3,728.00             |
| 7-0695-00 Los Angeles County/City.....       | 3,990,737.00          | 503,499.00           |
| 7-0760-00 Madera County.....                 | 58,436.00             | 7,373.00             |
| 7-0768-00 Mendocino County.....              | 50,125.00             | 6,324.00             |
| 7-0770-00 Merced County.....                 | 133,544.00            | 16,849.00            |
| 7-0776-00 Monterey County.....               | 223,794.00            | 28,236.00            |
| 7-0786-00 Orange County.....                 | 706,105.00            | 89,089.00            |
| 7-0820-00 Riverside County.....              | 441,559.00            | 55,711.00            |
| 7-0824-00 Sacramento County.....             | 453,232.00            | 57,184.00            |
| 7-0828-00 San Benito County.....             | 35,873.00             | 4,526.00             |
| 7-0830-00 San Bernardino County.....         | 466,961.00            | 58,916.00            |
| 7-0840-00 San Diego County.....              | 825,310.00            | 104,129.00           |
| 7-0858-00 San Francisco City/County.....     | 306,586.00            | 38,682.00            |
| 7-0860-00 San Joaquin County.....            | 320,663.00            | 40,458.00            |
| 7-0864-00 San Luis Obispo County.....        | 67,304.00             | 8,492.00             |
| 7-0876-00 Santa Barbara County.....          | 140,339.00            | 17,706.00            |
| 7-0880-00 Santa Clara County.....            | 586,080.00            | 73,945.00            |
| 7-0892-00 Santa Cruz County.....             | 140,583.00            | 17,737.00            |
| 7-0896-00 Shasta County.....                 | 88,246.00             | 11,134.00            |
| 7-0900-00 Siskiyou County.....               | 32,075.00             | 4,047.00             |
| 7-0902-00 Solano County.....                 | 140,095.00            | 17,676.00            |
| 7-0912-00 Stanislaus County.....             | 314,983.00            | 39,741.00            |
| 7-0916-00 Sutter County.....                 | 52,790.00             | 6,660.00             |
| 7-0918-00 Tehama County.....                 | 26,360.00             | 3,326.00             |
| 7-0922-00 Tulare County.....                 | 237,035.00            | 29,907.00            |
| 7-0926-00 Tuolumne County.....               | 24,374.00             | 3,075.00             |
| 7-0928-00 Ventura County.....                | 314,809.00            | 39,719.00            |
| 7-0938-00 Yolo County.....                   | 79,395.00             | 10,017.00            |
| 7-0940-00 Yuba County.....                   | 36,030.00             | 4,546.00             |
| 7-0942-00 State Set-Aside Committee, CA..... | 342,028.00            | 0.00                 |
| Total.....                                   | 12,858,981.00         | 1,579,246.00         |
| Colorado:                                    |                       |                      |
| 7-0968-00 Adams County.....                  | 218,703.00            | 27,341.00            |
| 7-0990-00 Boulder County.....                | 122,045.00            | 15,398.00            |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|  | Public Law<br>100-404 | Public Law<br>101-45 |
|--|-----------------------|----------------------|
| 7-1012-00 Denver City/County.....              | 345,874.00            | 43,639.00            |
| 7-1022-00 El Paso County.....                  | 269,546.00            | 34,008.00            |
| 7-1026-00 Fremont County.....                  | 22,545.00             | 2,844.00             |
| 7-1028-00 Garfield County.....                 | 19,792.00             | 2,497.00             |
| 7-1056-00 La Plata County.....                 | 21,552.00             | 2,719.00             |
| 7-1058-00 Larimer County.....                  | 105,546.00            | 13,317.00            |
| 7-1068-00 Mesa County.....                     | 68,175.00             | 8,602.00             |
| 7-1074-00 Montezuma County.....                | 17,562.00             | 2,216.00             |
| 7-1076-00 Montrose County.....                 | 22,754.00             | 2,871.00             |
| 7-1092-00 Pueblo County.....                   | 82,096.00             | 10,358.00            |
| 7-1116-00 Weld County.....                     | 89,988.00             | 11,354.00            |
| 7-1122-00 State Set-Aside Committee, CO.....   | 455,095.00            | 0.00                 |
| Total.....                                     | 1,859,273.00          | 177,164.00           |
| Connecticut:                                   |                       |                      |
| 7-1422-00 Fairfield County (See Sub Jurs)..... | 0.00                  | 0.00                 |
| 7-1422-01 Fairfield/Bridgeport.....            | 113,428.00            | 14,311.00            |
| 7-1422-02 Fairfield/Danbury.....               | 34,522.00             | 4,356.00             |
| 7-1422-03 Fairfield/Norwalk.....               | 41,919.00             | 5,289.00             |
| 7-1422-04 Fairfield/Stamford.....              | 56,714.00             | 0.00                 |
| 7-1438-00 Hartford County.....                 | 242,105.00            | 30,546.00            |
| 7-1458-00 New Haven County.....                | 228,062.00            | 28,774.00            |
| 7-1478-00 State Set-Aside Committee, CT.....   | 105,341.00            | 0.00                 |
| Total.....                                     | 822,091.00            | 83,276.00            |
| Delaware:                                      |                       |                      |
| 7-1480-00 Kent County.....                     | 32,859.00             | 4,146.00             |
| 7-1482-00 New Castle County.....               | 118,979.00            | 15,012.00            |
| 7-1486-00 Sussex County.....                   | 29,915.00             | 3,774.00             |
| 7-1488-00 State Set-Aside Committee, DE.....   | 68,247.00             | 0.00                 |
| Total.....                                     | 250,000.00            | 22,932.00            |
| District of Columbia:                          |                       |                      |
| 7-1492-00 District of Columbia.....            | 333,591.00            | 42,089.00            |
| Total.....                                     | 333,591.00            | 42,089.00            |
| Florida:                                       |                       |                      |
| 7-1556-00 Alachua County.....                  | 52,059.00             | 6,568.00             |
| 7-1562-00 Bay County.....                      | 90,737.00             | 11,448.00            |
| 7-1566-00 Brevard County.....                  | 153,720.00            | 19,395.00            |
| 7-1570-00 Broward County.....                  | 458,494.00            | 57,848.00            |
| 7-1586-00 Citrus County.....                   | 32,720.00             | 4,128.00             |
| 7-1590-00 Collier County.....                  | 53,470.00             | 6,746.00             |
| 7-1592-00 Columbia County.....                 | 27,824.00             | 3,511.00             |
| 7-1594-00 Dade County.....                     | 650,543.00            | 82,079.00            |
| 7-1598-00 Miami City.....                      | 239,927.00            | 30,271.00            |
| 7-1608-00 Duval County.....                    | 329,532.00            | 41,577.00            |
| 7-1612-00 Escambia County.....                 | 125,095.00            | 15,783.00            |
| 7-1620-00 Gadsden County.....                  | 17,510.00             | 2,209.00             |
| 7-1632-00 Hendry County.....                   | 20,228.00             | 2,552.00             |
| 7-1634-00 Hernando County.....                 | 37,372.00             | 4,715.00             |
| 7-1636-00 Highlands County.....                | 24,583.00             | 3,102.00             |
| 7-1638-00 Hillsborough County.....             | 372,042.00            | 46,940.00            |
| 7-1644-00 Indian River County.....             | 51,153.00             | 6,454.00             |
| 7-1646-00 Jackson County.....                  | 20,768.00             | 2,620.00             |
| 7-1652-00 Lake County.....                     | 57,442.00             | 7,247.00             |
| 7-1654-00 Lee County.....                      | 87,566.00             | 11,048.00            |
| 7-1656-00 Leon County.....                     | 68,436.00             | 8,635.00             |
| 7-1666-00 Manatee County.....                  | 62,338.00             | 7,865.00             |
| 7-1668-00 Marion County.....                   | 74,900.00             | 9,450.00             |
| 7-1670-00 Martin County.....                   | 38,992.00             | 4,920.00             |
| 7-1672-00 Monroe County.....                   | 20,280.00             | 2,559.00             |
| 7-1674-00 Nassau County.....                   | 22,406.00             | 2,827.00             |
| 7-1676-00 Okaloosa County.....                 | 64,115.00             | 8,089.00             |
| 7-1680-00 Orange County.....                   | 295,139.00            | 37,237.00            |
| 7-1684-00 Osceola County.....                  | 36,187.00             | 4,566.00             |
| 7-1686-00 Palm Beach County.....               | 360,387.00            | 45,470.00            |
| 7-1694-00 Pinellas County.....                 | 293,624.00            | 37,046.00            |
| 7-1702-00 Polk County.....                     | 256,531.00            | 32,366.00            |
| 7-1706-00 Putnam County.....                   | 31,291.00             | 3,948.00             |
| 7-1708-00 St. Johns County.....                | 345,176.00            | 4,438.00             |
| 7-1710-00 St. Lucie County.....                | 95,598.00             | 12,062.00            |
| 7-1712-00 Santa Rosa County.....               | 34,497.00             | 4,352.00             |
| 7-1714-00 Sarasota County.....                 | 73,350.00             | 9,255.00             |
| 7-1728-00 Volusia County.....                  | 117,220.00            | 14,790.00            |
| 7-1738-00 State Set-Aside Committee, FL.....   | 224,562.00            | 0.00                 |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|           |                                 | Public Law<br>100-404 | Public Law<br>101-45 |
|-----------|---------------------------------|-----------------------|----------------------|
| Total     |                                 | 5,107,814.00          | 616,116.00           |
| Georgia:  |                                 |                       |                      |
| 7-1740-00 | Atlanta/Dekalb, Fulton Counties | 618,068.00            | 77,981.00            |
| 7-1742-00 | Macon/Bibb, Jones Counties      | 77,531.00             | 9,782.00             |
| 7-1786-00 | Bartow County                   | 27,580.00             | 3,480.00             |
| 7-1806-00 | Burke County                    | 19,095.00             | 2,409.00             |
| 7-1816-00 | Carroll County                  | 32,423.00             | 4,091.00             |
| 7-1822-00 | Chatham County                  | 111,662.00            | 14,088.00            |
| 7-1832-00 | Clarke County                   | 29,758.00             | 3,755.00             |
| 7-1840-00 | Cobb County                     | 151,576.00            | 19,124.00            |
| 7-1844-00 | Colquitt County                 | 21,639.00             | 2,730.00             |
| 7-1850-00 | Coweta County                   | 21,064.00             | 2,658.00             |
| 7-1870-00 | Dougherty County                | 78,594.00             | 9,916.00             |
| 7-1892-00 | Floyd County                    | 41,518.00             | 5,238.00             |
| 7-1906-00 | Glynn County                    | 26,552.00             | 3,350.00             |
| 7-1908-00 | Gordon County                   | 19,461.00             | 2,455.00             |
| 7-1932-00 | Houston County                  | 33,138.00             | 4,181.00             |
| 7-1956-00 | Laurens County                  | 24,688.00             | 3,115.00             |
| 7-1966-00 | Lowndes County                  | 32,981.00             | 4,161.00             |
| 7-1994-00 | Muskogee County                 | 81,886.00             | 10,332.00            |
| 7-1998-00 | Newton County                   | 22,179.00             | 2,798.00             |
| 7-2026-00 | Richmond County                 | 95,058.00             | 11,993.00            |
| 7-2036-00 | Spalding County                 | 27,946.00             | 3,526.00             |
| 7-2056-00 | Thomas County                   | 23,085.00             | 2,913.00             |
| 7-2066-00 | Troup County                    | 33,312.00             | 4,203.00             |
| 7-2076-00 | Walker County                   | 27,528.00             | 3,473.00             |
| 7-2078-00 | Walton County                   | 17,457.00             | 2,203.00             |
| 7-2080-00 | Ware County                     | 24,357.00             | 3,073.00             |
| 7-2094-00 | Whitfield County                | 36,047.00             | 4,548.00             |
| 7-2104-00 | State Set-Aside Committee, GA   | 763,185.00            | 0.00                 |
| Total     |                                 | 2,519,368.00          | 221,576.00           |
| Hawaii:   |                                 |                       |                      |
| 7-2108-00 | Hawaii County                   | 51,153.00             | 6,454.00             |
| 7-2116-00 | State Set-Aside Committee, HI   | 198,847.00            | 0.00                 |
| Total     |                                 | 250,000.00            | 6,454.00             |
| Idaho:    |                                 |                       |                      |
| 7-2134-00 | Bannock County                  | 43,522.00             | 5,491.00             |
| 7-2140-00 | Bingham County                  | 26,848.00             | 3,387.00             |
| 7-2146-00 | Bonner County                   | 18,398.00             | 2,321.00             |
| 7-2156-00 | Canyon County                   | 62,948.00             | 7,942.00             |
| 7-2184-00 | Kootenai County                 | 49,898.00             | 6,296.00             |
| 7-2198-00 | Nez Perce County                | 19,322.00             | 2,438.00             |
| 7-2212-00 | Twin Falls County               | 32,249.00             | 4,069.00             |
| 7-2218-00 | State Set-Aside Committee, ID   | 171,447.00            | 0.00                 |
| Total     |                                 | 424,632.00            | 31,944.00            |
| Illinois: |                                 |                       |                      |
| 7-2342-00 | Adams County                    | 41,292.00             | 5,210.00             |
| 7-2348-00 | Boone County                    | 29,880.00             | 3,770.00             |
| 7-2352-00 | Bureau County                   | 25,420.00             | 3,207.00             |
| 7-2360-00 | Champaign County                | 65,439.00             | 8,256.00             |
| 7-2364-00 | Christian County                | 25,507.00             | 3,218.00             |
| 7-2370-00 | Clinton County                  | 27,719.00             | 3,497.00             |
| 7-2372-00 | Coles County                    | 28,016.00             | 3,535.00             |
| 7-2374-00 | Cook County                     | 1,206,430.00          | 152,214.00           |
| 7-2378-00 | Chicago City                    | 1,984,402.00          | 250,371.00           |
| 7-2402-00 | Dekalb County                   | 27,423.00             | 3,460.00             |
| 7-2414-00 | Edgar County                    | 17,562.00             | 2,216.00             |
| 7-2420-00 | Fayette County                  | 18,520.00             | 2,337.00             |
| 7-2424-00 | Franklin County                 | 48,052.00             | 6,063.00             |
| 7-2426-00 | Fulton County                   | 29,862.00             | 3,768.00             |
| 7-2432-00 | Grundy County                   | 34,288.00             | 4,326.00             |
| 7-2442-00 | Henry County                    | 36,570.00             | 4,614.00             |
| 7-2444-00 | Iroquois County                 | 20,524.00             | 2,589.00             |
| 7-2446-00 | Jackson County                  | 39,410.00             | 4,972.00             |
| 7-2450-00 | Jefferson County                | 45,020.00             | 5,680.00             |
| 7-2464-00 | Kankakee County                 | 75,945.00             | 9,582.00             |
| 7-2468-00 | Knox County                     | 43,766.00             | 5,522.00             |
| 7-2474-00 | La Salle County                 | 101,556.00            | 12,813.00            |
| 7-2478-00 | Lee County                      | 22,144.00             | 2,794.00             |
| 7-2484-00 | Mc Donough County               | 19,130.00             | 2,414.00             |
| 7-2490-00 | Macon County                    | 95,215.00             | 12,013.00            |
| 7-2494-00 | Macoupin County                 | 34,863.00             | 4,399.00             |
| 7-2496-00 | Madison County                  | 176,421.00            | 22,259.00            |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|  | Public Law<br>100-404 | Public Law<br>101-45 |
|--|-----------------------|----------------------|
| 7-2498-00 Marion County.....                 | 42,424.00             | 5,353.00             |
| 7-2512-00 Montgomery County.....             | 24,932.00             | 3,146.00             |
| 7-2518-00 Ogle County.....                   | 34,131.00             | 4,306.00             |
| 7-2520-00 Peoria County.....                 | 108,038.00            | 13,631.00            |
| 7-2524-00 Perry County.....                  | 26,500.00             | 3,343.00             |
| 7-2536-00 Randolph County.....               | 24,200.00             | 3,053.00             |
| 7-2540-00 Rock Island County.....            | 107,376.00            | 13,548.00            |
| 7-2542-00 St. Clair County.....              | 192,468.00            | 24,284.00            |
| 7-2546-00 Saline County.....                 | 29,009.00             | 3,660.00             |
| 7-2562-00 Tazewell County.....               | 74,795.00             | 9,437.00             |
| 7-2564-00 Union County.....                  | 17,771.00             | 2,242.00             |
| 7-2566-00 Vermilion County.....              | 84,517.00             | 10,663.00            |
| 7-2574-00 Wayne County.....                  | 18,381.00             | 2,319.00             |
| 7-2576-00 White County.....                  | 20,541.00             | 2,592.00             |
| 7-2578-00 Whiteside County.....              | 37,946.00             | 4,788.00             |
| 7-2580-00 Will County.....                   | 236,982.00            | 29,900.00            |
| 7-2586-00 Williamson County.....             | 61,484.00             | 7,757.00             |
| 7-2588-00 Winnebago County.....              | 192,711.00            | 24,314.00            |
| 7-2594-00 State Set-Aside Committee, IL..... | 765,443.00            | 0.00                 |
| Total.....                                   | 6,420,025.00          | 713,435.00           |
| Indiana:                                     |                       |                      |
| 7-2622-00 Allen County.....                  | 134,259.00            | 16,939.00            |
| 7-2656-00 Delaware County.....               | 66,241.00             | 8,358.00             |
| 7-2662-00 Elkhart County.....                | 72,026.00             | 9,087.00             |
| 7-2666-00 Fayette County.....                | 19,568.00             | 2,469.00             |
| 7-2678-00 Grant County.....                  | 46,832.00             | 5,909.00             |
| 7-2680-00 Greene County.....                 | 23,277.00             | 2,937.00             |
| 7-2690-00 Henry County.....                  | 30,228.00             | 3,814.00             |
| 7-2696-00 Jackson County.....                | 24,374.00             | 3,075.00             |
| 7-2708-00 Knox County.....                   | 20,925.00             | 2,640.00             |
| 7-2714-00 Lake County.....                   | 166,351.00            | 20,988.00            |
| 7-2716-00 Gary City.....                     | 113,108.00            | 14,271.00            |
| 7-2722-00 Lawrence County.....               | 26,482.00             | 3,341.00             |
| 7-2724-00 Madison County.....                | 66,763.00             | 8,423.00             |
| 7-2728-00 Marion County.....                 | 385,127.00            | 48,591.00            |
| 7-2736-00 Miami County.....                  | 20,576.00             | 2,596.00             |
| 7-2738-00 Monroe County.....                 | 37,615.00             | 4,746.00             |
| 7-2770-00 Randolph County.....               | 18,869.00             | 2,381.00             |
| 7-2776-00 St. Joseph County.....             | 116,627.00            | 14,715.00            |
| 7-2794-00 Tippecanoe County.....             | 40,804.00             | 5,148.00             |
| 7-2800-00 Vanderburgh County.....            | 93,507.00             | 11,798.00            |
| Indiana:                                     |                       |                      |
| 7-2806-00 Vigo County.....                   | 52,007.00             | 6,562.00             |
| 7-2818-00 Wayne County.....                  | 46,536.00             | 5,871.00             |
| 7-2826-00 State Set-Aside Committee, IN..... | 543,265.00            | 0.00                 |
| Total.....                                   | 2,165,365.00          | 204,659.00           |
| Iowa:  |                       |                      |
| 7-2858-00 Blackhawk County.....              | 72,182.00             | 9,107.00             |
| 7-2952-00 Johnson County.....                | 19,810.00             | 2,499.00             |
| 7-2962-00 Lee County.....                    | 28,956.00             | 3,653.00             |
| 7-3038-00 Wapello County.....                | 22,911.00             | 2,891.00             |
| 7-3052-00 Woodbury County.....               | 55,544.00             | 7,008.00             |
| 7-3060-00 State Set-Aside Committee, IA..... | 516,363.00            | 0.00                 |
| Total.....                                   | 715,766.00            | 25,158.00            |
| Kansas:                                      |                       |                      |
| 7-3116-00 Crawford County.....               | 17,492.00             | 2,207.00             |
| 7-3124-00 Douglas County.....                | 25,838.00             | 3,260.00             |
| 7-3208-00 Montgomery County.....             | 18,398.00             | 2,321.00             |
| 7-3244-00 Riley County.....                  | 17,597.00             | 2,220.00             |
| 7-3296-00 Wyandotte County.....              | 123,230.00            | 15,548.00            |
| 7-3300-00 State Set-Aside Committee, KS..... | 399,552.00            | 0.00                 |
| Total.....                                   | 602,107.00            | 25,556.00            |
| Kentucky:                                    |                       |                      |
| 7-3324-00 Barren County.....                 | 29,698.00             | 3,746.00             |
| 7-3328-00 Bell County.....                   | 24,758.00             | 3,124.00             |
| 7-3334-00 Boyd County.....                   | 34,026.00             | 4,293.00             |
| 7-3336-00 Boyle County.....                  | 23,068.00             | 2,910.00             |
| 7-3358-00 Carter County.....                 | 29,601.00             | 3,735.00             |
| 7-3362-00 Christian County.....              | 28,138.00             | 3,550.00             |
| 7-3364-00 Clark County.....                  | 19,374.00             | 2,444.00             |
| 7-3374-00 Daviess County.....                | 73,767.00             | 9,307.00             |
| 7-3384-00 Lexington/Fayette.....             | 91,695.00             | 11,569.00            |
| 7-3388-00 Floyd County.....                  | 37,650.00             | 4,750.00             |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|   | Public Law<br>100-404 | Public Law<br>101-45 |
|---|-----------------------|----------------------|
| 7-3400-00 Graves County.....                      | 21,883.00             | 2,761.00             |
| 7-3402-00 Grayson County.....                     | 19,095.00             | 2,409.00             |
| 7-3406-00 Greenup County.....                     | 24,548.00             | 3,097.00             |
| 7-3410-00 Hardin County.....                      | 35,908.00             | 4,530.00             |
| 7-3412-00 Harlan County.....                      | 30,751.00             | 3,880.00             |
| 7-3418-00 Henderson County.....                   | 36,570.00             | 4,614.00             |
| 7-3424-00 Hopkins County.....                     | 27,528.00             | 3,473.00             |
| 7-3428-00 Jefferson County.....                   | 440,653.00            | 55,597.00            |
| 7-3434-00 Johnson County.....                     | 20,855.00             | 2,631.00             |
| 7-3436-00 Kenton County.....                      | 69,830.00             | 8,810.00             |
| 7-3442-00 Knox County.....                        | 20,193.00             | 2,548.00             |
| 7-3446-00 Laurel County.....                      | 31,692.00             | 3,999.00             |
| 7-3454-00 Letcher County.....                     | 20,628.00             | 2,603.00             |
| 7-3458-00 Lincoln County.....                     | 22,440.00             | 2,831.00             |
| 7-3466-00 Mccracken County.....                   | 35,647.00             | 4,498.00             |
| 7-3472-00 Madison County.....                     | 25,803.00             | 3,256.00             |
| 7-3478-00 Marshall County.....                    | 20,297.00             | 2,561.00             |
| 7-3494-00 Montgomery County.....                  | 24,461.00             | 3,086.00             |
| 7-3498-00 Muhlenberg County.....                  | 24,287.00             | 3,064.00             |
| 7-3500-00 Nelson County.....                      | 25,942.00             | 3,273.00             |
| 7-3504-00 Ohio County.....                        | 19,409.00             | 2,449.00             |
| 7-3514-00 Perry County.....                       | 24,548.00             | 3,097.00             |
| 7-3516-00 Pike County.....                        | 70,927.00             | 8,949.00             |
| 7-3520-00 Pulaski County.....                     | 32,511.00             | 4,102.00             |
| 7-3548-00 Warren County.....                      | 72,461.00             | 9,142.00             |
| 7-3556-00 Whitley County.....                     | 23,346.00             | 2,946.00             |
| 7-3562-00 State Set-Aside Committee, KY.....      | 426,202.00            | 0.00                 |
| Total.....  | 2,040,180.00          | 203,634.00           |
| Louisiana:  |                       |                      |
| 7-3564-00 Shreveport/Bossier, Caddo Parishes..... | 300,017.00            | 37,853.00            |
| 7-3574-00 Acadia Parish.....                      | 57,704.00             | 7,280.00             |
| 7-3576-00 Allen Parish.....                       | 21,534.00             | 2,717.00             |
| 7-3578-00 Ascension Parish.....                   | 59,829.00             | 7,549.00             |
| 7-3580-00 Assumption Parish.....                  | 26,448.00             | 3,337.00             |
| 7-3582-00 IAvoyelles Parish.....                  | 47,808.00             | 6,032.00             |
| 7-3584-00 Beauregard Parish.....                  | 28,538.00             | 3,601.00             |
| 7-3598-00 Calcasieu Parish.....                   | 162,483.00            | 20,500.00            |
| 7-3610-00 Concordia Parish.....                   | 26,099.00             | 3,293.00             |
| 7-3612-00 De Soto Parish.....                     | 26,134.00             | 3,297.00             |
| 7-3614-00 East Baton Rouge Parish.....            | 274,424.00            | 34,624.00            |
| 7-3622-00 Evangeline Parish.....                  | 31,413.00             | 3,963.00             |
| 7-3624-00 Franklin Parish.....                    | 21,813.00             | 2,752.00             |
| 7-3628-00 Iberia Parish.....                      | 73,489.00             | 9,272.00             |
| 7-3630-00 Iberville Parish.....                   | 32,998.00             | 4,163.00             |
| 7-3634-00 Jefferson Parish.....                   | 349,253.00            | 44,065.00            |
| 7-3638-00 Jefferson Davis Parish.....             | 32,563.00             | 4,108.00             |
| 7-3640-00 Lafayette Parish.....                   | 145,304.00            | 18,333.00            |
| 7-3644-00 Lafourche Parish.....                   | 73,297.00             | 9,248.00             |
| 7-3650-00 Livingston Parish.....                  | 74,656.00             | 9,419.00             |
| 7-3652-00 Madison Parish.....                     | 17,492.00             | 2,207.00             |
| 7-3654-00 Morehouse Parish.....                   | 31,518.00             | 3,977.00             |
| 7-3656-00 Natchitoches Parish.....                | 28,852.00             | 3,640.00             |
| 7-3658-00 New Orleans City/Orleans.....           | 405,250.00            | 51,130.00            |
| 7-3660-00 Ouachita Parish.....                    | 119,659.00            | 15,097.00            |
| 7-3664-00 Plaquemines Parish.....                 | 19,775.00             | 2,495.00             |
| 7-3666-00 Pointe Coupee Parish.....               | 23,120.00             | 2,917.00             |
| 7-3668-00 Rapides Parish.....                     | 101,313.00            | 12,783.00            |
| 7-3674-00 Richland Parish.....                    | 22,493.00             | 2,838.00             |
| 7-3678-00 St Bernard Parish.....                  | 64,446.00             | 8,131.00             |
| 7-3680-00 St Charles Parish.....                  | 34,357.00             | 4,335.00             |
| 7-3684-00 St James Parish.....                    | 24,008.00             | 3,029.00             |
| 7-3686-00 St John Baptist Parish.....             | 32,946.00             | 4,157.00             |
| 7-3688-00 St Landry Parish.....                   | 96,068.00             | 12,121.00            |
| 7-3690-00 St Martin Parish.....                   | 41,518.00             | 5,238.00             |
| 7-3692-00 St Mary Parish.....                     | 76,520.00             | 9,654.00             |
| 7-3694-00 St Tammany Parish.....                  | 99,413.00             | 12,543.00            |
| 7-3696-00 Tangipahoa Parish.....                  | 91,173.00             | 11,503.00            |
| 7-3700-00 Terrebonne Parish.....                  | 87,636.00             | 11,057.00            |
| 7-3702-00 Union Parish.....                       | 17,667.00             | 2,229.00             |
| 7-3704-00 Vermilion Parish.....                   | 57,355.00             | 7,236.00             |
| 7-3706-00 Vernon Parish.....                      | 30,211.00             | 3,812.00             |
| 7-3708-00 Washington Parish.....                  | 36,587.00             | 4,618.00             |
| 7-3710-00 Webster Parish.....                     | 44,515.00             | 5,616.00             |
| 7-3712-00 West Baton Rouge Parish.....            | 18,590.00             | 2,345.00             |
| 7-3714-00 West Carroll Parish.....                | 19,461.00             | 2,455.00             |
| 7-3720-00 State Set-Aside Committee, LA.....      | 186,048.00            | 0.00                 |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|   | Public Law<br>100-404 | Public Law<br>101-45 |
|---|-----------------------|----------------------|
| Total.....                                    | 3,693,795.00          | 442,567.00           |
| Maine:  |                       |                      |
| 7-3726-00 Androscoggin County.....            | 41,657.00             | 5,256.00             |
| 7-3728-00 Aroostook County.....               | 53,418.00             | 6,740.00             |
| 7-3730-00 Cumberland County.....              | 55,804.00             | 7,041.00             |
| 7-3736-00 Hancock County.....                 | 21,047.00             | 2,655.00             |
| 7-3738-00 Kennebec County.....                | 42,180.00             | 5,322.00             |
| 7-3744-00 Oxford County.....                  | 19,688.00             | 2,484.00             |
| 7-3746-00 Penobscot County.....               | 48,766.00             | 6,153.00             |
| 7-3752-00 Somerset County.....                | 26,500.00             | 3,343.00             |
| 7-3756-00 Washington County.....              | 23,346.00             | 2,946.00             |
| 7-3760-00 State Set-Aside Committee, ME.....  | 50,269.00             | 0.00                 |
| Total.....                                    | 382,675.00            | 41,940.00            |
| Maryland:                                     |                       |                      |
| 7-3774-00 Allegany County.....                | 58,331.00             | 7,360.00             |
| 7-3790-00 Dorchester County.....              | 20,263.00             | 2,557.00             |
| 7-3794-00 Garrett County.....                 | 19,478.00             | 2,458.00             |
| 7-3812-00 Somerset County.....                | 19,566.00             | 2,469.00             |
| 7-3818-00 Wicomico County.....                | 37,267.00             | 4,702.00             |
| 7-3820-00 Worcester County.....               | 25,995.00             | 3,280.00             |
| 7-3822-00 Baltimore City.....                 | 427,081.00            | 53,885.00            |
| 7-3824-00 State Set-Aside Committee, MD.....  | 572,787.00            | 0.00                 |
| Total.....                                    | 1,180,768.00          | 76,711.00            |
| Massachusetts:                                |                       |                      |
| 7-4482-00 Bristol County.....                 | 183,094.00            | 23,101.00            |
| 7-4490-00 Essex County.....                   | 201,962.00            | 25,481.00            |
| 7-4502-00 Hampden County.....                 | 115,634.00            | 14,589.00            |
| 7-4508-00 Hampshire County.....               | 33,277.00             | 4,199.00             |
| 7-4510-00 Middlesex County.....               | 323,990.00            | 40,878.00            |
| 7-4540-00 Plymouth County.....                | 115,216.00            | 14,537.00            |
| 7-4550-00 Suffolk County.....                 | 181,805.00            | 22,938.00            |
| 7-4554-00 Worcester County.....               | 181,892.00            | 22,949.00            |
| 7-4558-00 State Set-Aside Committee, MA.....  | 133,965.00            | 0.00                 |
| Total.....                                    | 1,470,835.00          | 168,672.00           |
| Michigan:                                     |                       |                      |
| 7-4560-00 Lansing/Eaton, Ingham Counties..... | 243,985.00            | 30,783.00            |
| 7-4638-00 Alpena County.....                  | 28,660.00             | 3,616.00             |
| 7-4646-00 Barry County.....                   | 28,730.00             | 3,625.00             |
| 7-4648-00 Bay County.....                     | 87,618.00             | 11,055.00            |
| 7-4652-00 Barrien County.....                 | 95,128.00             | 12,002.00            |
| 7-4654-00 Branch County.....                  | 23,852.00             | 3,009.00             |
| 7-4656-00 Calhoun County.....                 | 91,782.00             | 11,580.00            |
| 7-4660-00 Cass County.....                    | 24,217.00             | 3,055.00             |
| 7-4664-00 Cheboygan County.....               | 27,441.00             | 3,462.00             |
| 7-4666-00 Chippewa County.....                | 28,469.00             | 3,592.00             |
| 7-4674-00 Delta County.....                   | 28,294.00             | 3,570.00             |
| 7-4682-00 Emmet County.....                   | 21,256.00             | 2,682.00             |
| 7-4684-00 Genesee County.....                 | 480,603.00            | 60,637.00            |
| 7-4692-00 Grand Traverse County.....          | 46,292.00             | 5,841.00             |
| 7-4694-00 Gratiot County.....                 | 33,451.00             | 4,220.00             |
| 7-4696-00 Hillsdale County.....               | 31,465.00             | 3,970.00             |
| 7-4698-00 Houghton County.....                | 18,137.00             | 2,288.00             |
| 7-4700-00 Huron County.....                   | 28,556.00             | 3,603.00             |
| 7-4708-00 Ionia County.....                   | 35,072.00             | 4,425.00             |
| 7-4714-00 Isabella County.....                | 27,841.00             | 3,513.00             |
| 7-4716-00 Jackson County.....                 | 84,883.00             | 10,710.00            |
| 7-4718-00 Kalamazoo County.....               | 105,302.00            | 13,286.00            |
| 7-4724-00 Kent County.....                    | 277,036.00            | 34,953.00            |
| 7-4734-00 Lapeer County.....                  | 70,004.00             | 8,832.00             |
| 7-4738-00 Lenawee County.....                 | 70,457.00             | 8,890.00             |
| 7-4744-00 Mackinac County.....                | 22,858.00             | 2,884.00             |
| 7-4746-00 Macomb County.....                  | 531,390.00            | 67,045.00            |
| 7-4758-00 Manistee County.....                | 17,684.00             | 2,231.00             |
| 7-4760-00 Marquette County.....               | 38,382.00             | 4,843.00             |
| 7-4762-00 Macon County.....                   | 18,520.00             | 2,337.00             |
| 7-4764-00 Mecosta County.....                 | 19,984.00             | 2,521.00             |
| 7-4772-00 Monroe County.....                  | 83,716.00             | 10,562.00            |
| 7-4774-00 Montcalm County.....                | 39,497.00             | 4,983.00             |
| 7-4778-00 Muskegon County.....                | 109,641.00            | 13,833.00            |
| 7-4780-00 Newaygo County.....                 | 27,685.00             | 3,493.00             |
| 7-4782-00 Oakland County.....                 | 668,471.00            | 84,341.00            |
| 7-4796-00 Oceana County.....                  | 18,851.00             | 2,378.00             |
| 7-4814-00 Saginaw County.....                 | 141,842.00            | 17,909.00            |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|   | Public Law<br>100-404 | Public Law<br>101-45 |
|---|-----------------------|----------------------|
| 7-4818-00 St. Clair County.....                         | 118,439.00            | 14,943.00            |
| 7-4820-00 St. Joseph County.....                        | 45,839.00             | 5,783.00             |
| 7-4822-00 Sanilac County.....                           | 35,978.00             | 4,539.00             |
| 7-4826-00 Shiawassee County.....                        | 67,582.00             | 8,527.00             |
| 7-4828-00 Tuscola County.....                           | 45,142.00             | 5,696.00             |
| 7-4830-00 Van Buren County.....                         | 50,578.00             | 6,381.00             |
| 7-4832-00 Washtenaw County.....                         | 113,822.00            | 14,361.00            |
| 7-4836-00 Wayne County.....                             | 629,044.00            | 79,366.00            |
| 7-4844-00 Detroit City.....                             | 975,963.00            | 123,137.00           |
| 7-4854-00 Wexford County.....                           | 20,419.00             | 2,576.00             |
| 7-4856-00 State Set-Aside Committee, MI.....            | 329,241.00            | 0.00                 |
| Total.....  | 6,209,199.00          | 741,868.00           |
| Minnesota:  |                       |                      |
| 7-4902-00 Becker County.....                            | 18,137.00             | 2,288.00             |
| 7-4904-00 Beltrami County.....                          | 17,841.00             | 2,251.00             |
| 7-4906-00 Benton County.....                            | 14,722.00             | 1,857.00             |
| 7-4914-00 Carlton County.....                           | 17,614.00             | 2,222.00             |
| 7-4924-00 Clay County.....                              | 19,618.00             | 2,475.00             |
| 7-4932-00 Crow Wing County.....                         | 23,799.00             | 3,003.00             |
| 7-4950-00 Hennepin County.....                          | 392,514.00            | 49,523.00            |
| 7-4968-00 Itasca County.....                            | 27,737.00             | 3,500.00             |
| 7-5004-00 Morrison County.....                          | 19,060.00             | 2,405.00             |
| 7-5020-00 Otter Tail County.....                        | 27,772.00             | 3,504.00             |
| 7-5028-00 Polk County.....                              | 19,496.00             | 2,460.00             |
| 7-5048-00 St. Louis County.....                         | 122,630.00            | 15,480.00            |
| 7-5054-00 Sherburne County.....                         | 19,287.00             | 2,433.00             |
| 7-5058-00 Stearns County.....                           | 53,731.00             | 6,779.00             |
| 7-5082-00 Winona County.....                            | 19,357.00             | 2,442.00             |
| 7-5088-00 State Set-Aside Committee, MN.....            | 534,953.00            | 0.00                 |
| Total.....  | 1,348,328.00          | 102,622.00           |
| Mississippi:  |                       |                      |
| 7-5090-00 Adams County.....                             | 29,862.00             | 3,768.00             |
| 7-5092-00 Alcorn County.....                            | 32,894.00             | 4,150.00             |
| 7-5100-00 Bolivar County.....                           | 33,852.00             | 4,271.00             |
| 7-5116-00 Coahoma County.....                           | 27,336.00             | 3,449.00             |
| 7-5118-00 Copiah County.....                            | 22,562.00             | 2,847.00             |
| 7-5122-00 De Soto County.....                           | 35,037.00             | 4,421.00             |
| 7-5124-00 Forrest County.....                           | 37,511.00             | 4,733.00             |
| 7-5128-00 George County.....                            | 19,182.00             | 2,420.00             |
| 7-5134-00 Hancock County.....                           | 18,503.00             | 2,335.00             |
| 7-5136-00 Harrison County.....                          | 109,606.00            | 13,829.00            |
| 7-5138-00 Hinds County.....                             | 153,458.00            | 19,362.00            |
| 7-5142-00 Holmes County.....                            | 20,350.00             | 2,568.00             |
| 7-5150-00 Jackson County.....                           | 101,034.00            | 12,747.00            |
| 7-5158-00 Jones County.....                             | 40,717.00             | 5,137.00             |
| 7-5166-00 Lauderdale County.....                        | 48,975.00             | 6,179.00             |
| 7-5172-00 Lee County.....                               | 38,730.00             | 4,887.00             |
| 7-5174-00 Leflore County.....                           | 34,288.00             | 4,326.00             |
| 7-5176-00 Lincoln County.....                           | 24,148.00             | 3,047.00             |
| 7-5178-00 Lowndes County.....                           | 38,243.00             | 4,825.00             |
| 7-5180-00 Madison County.....                           | 32,145.00             | 4,056.00             |
| 7-5182-00 Marion County.....                            | 21,691.00             | 2,737.00             |
| 7-5184-00 Marshall County.....                          | 26,517.00             | 3,346.00             |
| 7-5186-00 Monroe County.....                            | 21,395.00             | 2,639.00             |
| 7-5198-00 Panola County.....                            | 24,270.00             | 3,062.00             |
| 7-5200-00 Pearl River County.....                       | 24,601.00             | 3,104.00             |
| 7-5204-00 Pike County.....                              | 30,768.00             | 3,882.00             |
| 7-5212-00 Rankin County.....                            | 36,483.00             | 4,603.00             |
| 7-5224-00 Sunflower County.....                         | 30,472.00             | 3,845.00             |
| 7-5232-00 Tishomingo County.....                        | 18,921.00             | 2,387.00             |
| 7-5240-00 Warren County.....                            | 43,400.00             | 5,476.00             |
| 7-5242-00 Washington County.....                        | 68,802.00             | 8,681.00             |
| 7-5254-00 Yazoo County.....                             | 17,701.00             | 2,233.00             |
| 7-5256-00 State Set-Aside Committee, MS.....            | 267,325.00            | 0.00                 |
| Total.....  | 1,530,779.00          | 159,412.00           |
| Missouri:   |                       |                      |
| 7-5258-00 Kansas City/Clay, Jackson, Platte County..... | 442,308.00            | 55,806.00            |
| 7-5290-00 Boone County.....                             | 34,358.00             | 4,335.00             |
| 7-5294-00 Buchanan County.....                          | 46,431.00             | 5,858.00             |
| 7-5298-00 Butler County.....                            | 24,043.00             | 3,033.00             |
| 7-5306-00 Cape Girardeau County.....                    | 25,785.00             | 3,253.00             |
| 7-5348-00 Franklin County.....                          | 52,512.00             | 6,625.00             |
| 7-5354-00 Greene County.....                            | 79,952.00             | 10,087.00            |
| 7-5380-00 Jasper County.....                            | 41,065.00             | 5,181.00             |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|   |                                    | Public Law<br>100-404 | Public Law<br>101-45 |
|---|------------------------------------|-----------------------|----------------------|
| 7-5428-00   | Newton County.....                 | 20,123.00             | 2,539.00             |
| 7-5442-00   | Pettis County.....                 | 18,886.00             | 2,383.00             |
| 7-5474-00   | St. Francois County.....           | 29,706.00             | 3,748.00             |
| 7-5486-00   | Scott County.....                  | 20,994.00             | 2,649.00             |
| 7-5498-00   | Taney County.....                  | 22,667.00             | 2,860.00             |
| 7-5506-00   | Washington County.....             | 18,015.00             | 2,273.00             |
| 7-5516-00   | St. Louis City.....                | 304,077.00            | 38,365.00            |
| 7-5518-00   | State Set-Aside Committee, MO..... | 819,953.00            | 0.00                 |
| Total.....  |                                    | 2,000,875.00          | 148,995.00           |
| Montana:  |                                    |                       |                      |
| 7-5558-00   | Flathead County.....               | 44,497.00             | 5,614.00             |
| 7-5560-00   | Gallatin County.....               | 25,158.00             | 3,174.00             |
| 7-5592-00   | Missoula County.....               | 45,351.00             | 5,722.00             |
| 7-5610-00   | Ravalli County.....                | 18,921.00             | 2,387.00             |
| 7-5622-00   | Silver Bow County.....             | 22,998.00             | 2,902.00             |
| 7-5644-00   | State Set-Aside Committee, MT..... | 170,498.00            | 0.00                 |
| Total.....  |                                    | 327,423.00            | 19,799.00            |
| Nebraska:   |                                    |                       |                      |
| 7-5722-00   | Douglas County.....                | 192,364.00            | 24,270.00            |
| 7-5828-00   | Scotts Bluff County.....           | 25,263.00             | 3,187.00             |
| 7-5858-00   | State Set-Aside Committee, NE..... | 191,438.00            | 0.00                 |
| Total.....  |                                    | 409,065.00            | 27,457.00            |
| Nevada:   |                                    |                       |                      |
| 7-5868-00   | Clark County.....                  | 365,004.00            | 46,052.00            |
| 7-5906-00   | State Set-Aside Committee, NV..... | 101,849.00            | 0.00                 |
| Total.....  |                                    | 466,853.00            | 46,052.00            |
| New Hampshire: 7-5942-00 State Set-Aside Committee, NH..... |                                    | 250,000.00            | 0.00                 |
| New Jersey:   |                                    |                       |                      |
| 7-5948-00   | Atlantic County.....               | 115,495.00            | 14,572.00            |
| 7-5954-00   | Camden County.....                 | 179,174.00            | 22,606.00            |
| 7-5962-00   | Cumberland County.....             | 74,899.00             | 9,450.00             |
| 7-5966-00   | Essex County.....                  | 172,972.00            | 21,824.00            |
| 7-5974-00   | Newark City.....                   | 184,819.00            | 23,318.00            |
| 7-5978-00   | Hudson County.....                 | 301,307.00            | 38,016.00            |
| 7-5988-00   | Mercer County.....                 | 94,780.00             | 11,958.00            |
| 7-6018-00   | Passaic County.....                | 189,854.00            | 23,954.00            |
| 7-6028-00   | Salem County.....                  | 26,099.00             | 3,293.00             |
| 7-6034-00   | Union County.....                  | 196,545.00            | 24,798.00            |
| 7-6042-00   | State Set-Aside Committee, NJ..... | 560,604.00            | 0.00                 |
| Total.....  |                                    | 2,096,548.00          | 193,789.00           |
| New Mexico:   |                                    |                       |                      |
| 7-6044-00   | Bernalillo County.....             | 285,871.00            | 36,068.00            |
| 7-6050-00   | Chaves County.....                 | 29,636.00             | 3,739.00             |
| 7-6052-00   | Cibola County.....                 | 20,733.00             | 2,616.00             |
| 7-6056-00   | Curry County.....                  | 24,845.00             | 3,135.00             |
| 7-6060-00   | Dona Ana County.....               | 72,078.00             | 9,094.00             |
| 7-6064-00   | Eddy County.....                   | 39,201.00             | 4,946.00             |
| 7-6074-00   | Lea County.....                    | 35,072.00             | 4,425.00             |
| 7-6082-00   | McKinley County.....               | 39,427.00             | 4,974.00             |
| 7-6086-00   | Otero County.....                  | 26,901.00             | 3,394.00             |
| 7-6090-00   | Rio Arriba County.....             | 44,933.00             | 5,669.00             |
| 7-6094-00   | Sandoval County.....               | 34,985.00             | 4,414.00             |
| 7-6096-00   | San Juan County.....               | 82,548.00             | 10,415.00            |
| 7-6098-00   | San Miguel County.....             | 22,597.00             | 2,851.00             |
| 7-6100-00   | Santa Fe County.....               | 58,592.00             | 7,393.00             |
| 7-6108-00   | Taos County.....                   | 44,741.00             | 5,645.00             |
| 7-6114-00   | Valencia County.....               | 26,343.00             | 3,324.00             |
| 7-6116-00   | State Set-Aside Committee, NM..... | 57,742.00             | 0.00                 |
| Total.....  |                                    | 946,245.00            | 112,102.00           |
| New York:   |                                    |                       |                      |
| 7-6120-00   | Albany County.....                 | 70,422.00             | 8,885.00             |
| 7-6126-00   | Allegany County.....               | 19,444.00             | 2,453.00             |
| 7-6130-00   | Broome County.....                 | 63,645.00             | 8,030.00             |
| 7-6136-00   | Cattaraugus County.....            | 36,622.00             | 4,621.00             |
| 7-6138-00   | Cayuga County.....                 | 37,981.00             | 4,792.00             |
| 7-6140-00   | Chautauqua County.....             | 58,244.00             | 7,349.00             |
| 7-6142-00   | Chemung County.....                | 27,685.00             | 3,493.00             |
| 7-6144-00   | Chenango County.....               | 18,416.00             | 2,324.00             |
| 7-6146-00   | Clinton County.....                | 37,180.00             | 4,691.00             |
| 7-6150-00   | Cortland County.....               | 20,228.00             | 2,552.00             |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|   | Public Law<br>100-404 | Public Law<br>101-45 |
|---|-----------------------|----------------------|
| 7-6156-00 Erie County.....                            | 220,170.00            | 27,779.00            |
| 7-6160-00 Buffalo City.....                           | 180,690.00            | 22,798.00            |
| 7-6168-00 Essex County.....                           | 18,607.00             | 2,348.00             |
| 7-6170-00 Franklin County.....                        | 28,138.00             | 3,550.00             |
| 7-6172-00 Fulton County.....                          | 34,828.00             | 4,394.00             |
| 7-6180-00 Herkimer County.....                        | 29,131.00             | 3,675.00             |
| 7-6182-00 Jefferson County.....                       | 59,359.00             | 7,489.00             |
| 7-6190-00 Madison County.....                         | 34,270.00             | 4,324.00             |
| 7-6192-00 Monroe County.....                          | 217,452.00            | 27,436.00            |
| 7-6202-00 Nassau County.....                          | 365,214.00            | 46,079.00            |
| 7-6212-00 Niagara County.....                         | 107,062.00            | 13,508.00            |
| 7-6216-00 Oneida County.....                          | 84,935.00             | 10,716.00            |
| 7-6220-00 Onondaga County.....                        | 205,483.00            | 25,926.00            |
| 7-6232-00 Oswego County.....                          | 80,946.00             | 10,213.00            |
| 7-6234-00 Otsego County.....                          | 19,200.00             | 2,422.00             |
| 7-6240-00 Rensselaer County.....                      | 44,881.00             | 5,663.00             |
| 7-6254-00 St. Lawrence County.....                    | 56,136.00             | 7,083.00             |
| 7-6258-00 Schenectady County.....                     | 48,940.00             | 6,175.00             |
| 7-6268-00 Steuben County.....                         | 37,511.00             | 4,733.00             |
| 7-6270-00 Suffolk County.....                         | 407,341.00            | 51,394.00            |
| 7-6282-00 Sullivan County.....                        | 20,994.00             | 2,649.00             |
| 7-6286-00 Tompkins County.....                        | 18,311.00             | 2,310.00             |
| 7-6288-00 Ulster County.....                          | 44,062.00             | 5,559.00             |
| 7-6290-00 Warren County.....                          | 26,256.00             | 3,313.00             |
| 7-6292-00 Washington County.....                      | 19,391.00             | 2,447.00             |
| 7-6296-00 Westchester County.....                     | 248,115.00            | 31,305.00            |
| 7-6314-00 New York City.....                          | 2,875,377.00          | 362,784.00           |
| 7-6312-00 State Set-Aside Committee, NY.....          | 297,401.00            | 0.00                 |
| Total.....  | 6,220,068.00          | 747,262.00           |
| North Carolina:                                       |                       |                      |
| 7-6316-00 High Point/Guilford, Davidson Counties..... | 147,483.00            | 18,608.00            |
| 7-6332-00 Beaufort County.....                        | 22,684.00             | 2,862.00             |
| 7-6338-00 Brunswick County.....                       | 28,834.00             | 3,638.00             |
| 7-6340-00 Buncombe County.....                        | 59,133.00             | 7,461.00             |
| 7-6352-00 Carteret County.....                        | 25,454.00             | 3,212.00             |
| 7-6366-00 Cleveland County.....                       | 26,796.00             | 3,381.00             |
| 7-6368-00 Columbus County.....                        | 23,642.00             | 2,983.00             |
| 7-6370-00 Craven County.....                          | 23,137.00             | 2,919.00             |
| 7-6372-00 Cumberland County.....                      | 82,862.00             | 10,455.00            |
| 7-6386-00 Duplin County.....                          | 18,991.00             | 2,396.00             |
| 7-6388-00 Durham County.....                          | 51,222.00             | 6,463.00             |
| 7-6392-00 Edgecombe County.....                       | 29,462.00             | 3,717.00             |
| 7-6394-00 Forsyth County.....                         | 87,828.00             | 11,081.00            |
| 7-6398-00 Franklin County.....                        | 18,729.00             | 2,363.00             |
| 7-6400-00 Gaston County.....                          | 61,240.00             | 7,727.00             |
| 7-6418-00 Halifax County.....                         | 23,555.00             | 2,972.00             |
| 7-6420-00 Harnett County.....                         | 24,548.00             | 3,097.00             |
| 7-6422-00 Haywood County.....                         | 19,217.00             | 2,425.00             |
| 7-6424-00 Henderson County.....                       | 19,531.00             | 2,464.00             |
| 7-6436-00 Johnston County.....                        | 32,685.00             | 4,124.00             |
| 7-6440-00 Lee County.....                             | 21,203.00             | 2,675.00             |
| 7-6442-00 Lenoir County.....                          | 23,974.00             | 3,025.00             |
| 7-6454-00 Mecklenburg County.....                     | 146,263.00            | 18,454.00            |
| 7-6464-00 Nash County.....                            | 33,695.00             | 4,251.00             |
| 7-6466-00 New Hanover County.....                     | 62,913.00             | 7,938.00             |
| 7-6470-00 Onslow County.....                          | 21,970.00             | 2,772.00             |
| 7-6472-00 Orange County.....                          | 21,134.00             | 2,666.00             |
| 7-6482-00 Person County.....                          | 20,768.00             | 2,620.00             |
| 7-6484-00 Pitt County.....                            | 31,779.00             | 4,010.00             |
| 7-6490-00 Richmond County.....                        | 20,019.00             | 2,526.00             |
| 7-6492-00 Robeson County.....                         | 57,826.00             | 7,296.00             |
| 7-6494-00 Rockingham County.....                      | 36,797.00             | 4,643.00             |
| 7-6498-00 Rutherford County.....                      | 19,357.00             | 2,442.00             |
| 7-6500-00 Sampson County.....                         | 22,022.00             | 2,779.00             |
| 7-6506-00 Stokes County.....                          | 18,451.00             | 2,328.00             |
| 7-6508-00 Surry County.....                           | 24,636.00             | 3,108.00             |
| 7-6518-00 Vance County.....                           | 24,409.00             | 3,080.00             |
| 7-6520-00 Wake County.....                            | 111,697.00            | 14,093.00            |
| 7-6530-00 Wayne County.....                           | 32,650.00             | 4,119.00             |
| 7-6532-00 Wilkes County.....                          | 18,418.00             | 2,324.00             |
| 7-6534-00 Wilson County.....                          | 47,041.00             | 5,935.00             |
| 7-6540-00 State Set-Aside Committee, NC.....          | 354,892.00            | 0.00                 |
| Total.....  | 1,998,945.00          | 207,432.00           |
| North Dakota:   |                       |                      |
| 7-6596-00 Grand Forks County.....                     | 23,730.00             | 2,994.00             |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|   | Public Law<br>100-404 | Public Law<br>101-45 |
|---|-----------------------|----------------------|
| 7-6670-00 State Set-Aside Committee, ND.....            | 226,270.00            | 0.00                 |
| Total.....  | 250,000.00            | 2,994.00             |
| Ohio:   |                       |                      |
| 7-6672-00 Columbus/Fairfield, Franklin Counties.....    | 478,094.00            | 60,321.00            |
| 7-6678-00 Adams County.....                             | 18,137.00             | 2,288.00             |
| 7-6684-00 Ashtabula County.....                         | 80,980.00             | 10,217.00            |
| 7-6686-00 Athens County.....                            | 28,939.00             | 3,651.00             |
| 7-6690-00 Belmont County.....                           | 52,860.00             | 6,669.00             |
| 7-6692-00 Brown County.....                             | 24,148.00             | 3,047.00             |
| 7-6694-00 Butler County.....                            | 141,890.00            | 17,902.00            |
| 7-6702-00 Clark County.....                             | 65,962.00             | 8,322.00             |
| 7-6708-00 Clinton County.....                           | 22,336.00             | 2,818.00             |
| 7-6710-00 Columbiana County.....                        | 64,986.00             | 8,199.00             |
| 7-6712-00 Coshocton County.....                         | 22,040.00             | 2,781.00             |
| 7-6714-00 Crawford County.....                          | 29,775.00             | 3,757.00             |
| 7-6716-00 Cuyahoga County.....                          | 717,046.00            | 90,469.00            |
| 7-6730-00 Defiance County.....                          | 25,036.00             | 3,159.00             |
| 7-6740-00 Fayette County.....                           | 17,858.00             | 2,253.00             |
| 7-6746-00 Fulton County.....                            | 28,782.00             | 3,631.00             |
| 7-6748-00 Gallia County.....                            | 20,437.00             | 2,579.00             |
| 7-6754-00 Guernsey County.....                          | 32,302.00             | 4,076.00             |
| 7-6756-00 Hamilton County.....                          | 410,007.00            | 51,730.00            |
| 7-6762-00 Hardin County.....                            | 18,747.00             | 2,365.00             |
| 7-6766-00 Henry County.....                             | 18,764.00             | 2,367.00             |
| 7-6768-00 Highland County.....                          | 21,865.00             | 2,759.00             |
| 7-6770-00 Hocking County.....                           | 18,555.00             | 2,341.00             |
| 7-6774-00 Huron County.....                             | 47,111.00             | 5,944.00             |
| 7-6776-00 Jackson County.....                           | 23,764.00             | 2,998.00             |
| 7-6778-00 Jefferson County.....                         | 46,222.00             | 5,832.00             |
| 7-6780-00 Knox County.....                              | 25,890.00             | 3,267.00             |
| 7-6784-00 Lawrence County.....                          | 37,563.00             | 4,739.00             |
| 7-6788-00 Logan County.....                             | 21,395.00             | 2,699.00             |
| 7-6790-00 Lorain County.....                            | 152,988.00            | 19,302.00            |
| 7-6796-00 Lucas County.....                             | 269,528.00            | 34,006.00            |
| 7-6802-00 Mahoning County.....                          | 174,174.00            | 21,975.00            |
| 7-6806-00 Marion County.....                            | 44,445.00             | 5,608.00             |
| 7-6818-00 Montgomery County.....                        | 271,095.00            | 34,204.00            |
| 7-6828-00 Muskingum County.....                         | 59,376.00             | 7,491.00             |
| 7-6832-00 Ottawa County.....                            | 31,012.00             | 3,913.00             |
| 7-6836-00 Perry County.....                             | 34,235.00             | 4,319.00             |
| 7-6840-00 Pike County.....                              | 19,304.00             | 2,436.00             |
| 7-6846-00 Putnam County.....                            | 21,796.00             | 2,750.00             |
| 7-6848-00 Richland County.....                          | 75,910.00             | 9,578.00             |
| 7-6852-00 Ross County.....                              | 39,480.00             | 4,981.00             |
| 7-6854-00 Sandusky County.....                          | 45,787.00             | 5,777.00             |
| 7-6856-00 Scioto County.....                            | 53,714.00             | 6,777.00             |
| 7-6858-00 Seneca County.....                            | 35,316.00             | 4,456.00             |
| 7-6862-00 Stark County.....                             | 227,644.00            | 28,722.00            |
| 7-6866-00 Summit County.....                            | 292,177.00            | 36,864.00            |
| 7-6870-00 Trumbull County.....                          | 164,138.00            | 20,709.00            |
| 7-6884-00 Washington County.....                        | 42,476.00             | 5,359.00             |
| 7-6894-00 State Set-Aside Committee, OH.....            | 796,812.00            | 0.00                 |
| Total.....  | 5,412,898.00          | 582,407.00           |
| Oklahoma:   |                       |                      |
| 7-6896-00 Oklahoma City/Canadian, McLain, Oklahoma..... | 476,857.00            | 60,165.00            |
| 7-6915-00 Caddo County.....                             | 21,012.00             | 2,651.00             |
| 7-6922-00 Carter County.....                            | 27,092.00             | 3,418.00             |
| 7-6924-00 Cherokee County.....                          | 22,858.00             | 2,884.00             |
| 7-6938-00 Comanche County.....                          | 43,835.00             | 5,531.00             |
| 7-6946-00 Creek County.....                             | 43,435.00             | 5,480.00             |
| 7-6962-00 Grady County.....                             | 25,907.00             | 3,269.00             |
| 7-6990-00 Le Flore County.....                          | 23,974.00             | 3,025.00             |
| 7-6992-00 Lincoln County.....                           | 19,461.00             | 2,455.00             |
| 7-7002-00 McCurtain County.....                         | 21,743.00             | 2,743.00             |
| 7-7010-00 Mayes County.....                             | 24,688.00             | 3,115.00             |
| 7-7014-00 Muskogee County.....                          | 49,341.00             | 6,225.00             |
| 7-7028-00 Okmulgee County.....                          | 27,998.00             | 3,532.00             |
| 7-7034-00 Ottawa County.....                            | 22,615.00             | 2,853.00             |
| 7-7038-00 Payne County.....                             | 24,932.00             | 3,146.00             |
| 7-7040-00 Pittsburg County.....                         | 36,936.00             | 4,660.00             |
| 7-7042-00 Pontotoc County.....                          | 19,931.00             | 2,515.00             |
| 7-7052-00 Rogers County.....                            | 36,361.00             | 4,588.00             |
| 7-7054-00 Seminole County.....                          | 19,966.00             | 2,519.00             |
| 7-7056-00 Sequoyah County.....                          | 17,475.00             | 2,205.00             |
| 7-7058-00 Stephens County.....                          | 26,012.00             | 3,282.00             |
| 7-7064-00 Tulsa County.....                             | 327,406.00            | 41,309.00            |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|               |  | Public Law<br>100-404 | Public Law<br>101-45 |
|---------------|--|-----------------------|----------------------|
| 7-7068-00     | Wagoner County.....                            | 26,761.00             | 3,376.00             |
| 7-7078-00     | State Set-Aside Committee, OK.....             | 434,221.00            | 0.00                 |
| Total.....    |  | 1,820,817.00          | 174,946.00           |
| Oregon:       |  |                       |                      |
| 7-7080-00     | Portland-Clackamas, Multnomah, Washington..... | 526,755.00            | 66,460.00            |
| 7-7082-00     | Salem/Marion, Polk Counties.....               | 136,244.00            | 17,190.00            |
| 7-7090-00     | Benton County.....                             | 22,562.00             | 2,847.00             |
| 7-7096-00     | Clatsop County.....                            | 18,085.00             | 2,282.00             |
| 7-7098-00     | Columbia County.....                           | 21,796.00             | 2,750.00             |
| 7-7100-00     | Coos County.....                               | 41,204.00             | 5,199.00             |
| 7-7106-00     | Deschutes County.....                          | 47,250.00             | 5,962.00             |
| 7-7108-00     | Douglas County.....                            | 58,314.00             | 7,357.00             |
| 7-7108-00     | Jackson County.....                            | 76,660.00             | 9,672.00             |
| 7-7122-00     | Josephine County.....                          | 31,378.00             | 3,959.00             |
| 7-7124-00     | Klamath County.....                            | 36,709.00             | 4,632.00             |
| 7-7128-00     | Lane County.....                               | 134,624.00            | 16,985.00            |
| 7-7132-00     | Lincoln County.....                            | 20,750.00             | 2,618.00             |
| 7-7134-00     | Linn County.....                               | 55,944.00             | 7,058.00             |
| 7-7156-00     | Umatilla County.....                           | 45,926.00             | 5,794.00             |
| 7-7172-00     | State Set-Aside Committee, OR.....             | 214,755.00            | 0.00                 |
| Total.....    |  | 1,488,956.00          | 160,765.00           |
| Pennsylvania: |  |                       |                      |
| 7-7174-00     | Bethlehem/Northampton, Lehigh Cos.....         | 212,296.00            | 26,785.00            |
| 7-7180-00     | Allegheny County.....                          | 607,318.00            | 76,625.00            |
| 7-7184-00     | Armstrong County.....                          | 43,539.00             | 5,493.00             |
| 7-7186-00     | Beaver County.....                             | 105,842.00            | 13,354.00            |
| 7-7188-00     | Bedford County.....                            | 28,678.00             | 3,618.00             |
| 7-7190-00     | Berks County.....                              | 140,618.00            | 17,742.00            |
| 7-7194-00     | Blair County.....                              | 73,506.00             | 9,274.00             |
| 7-7198-00     | Bradford County.....                           | 27,528.00             | 3,473.00             |
| 7-7208-00     | Cambria County.....                            | 84,291.00             | 10,635.00            |
| 7-7214-00     | Centre County.....                             | 57,146.00             | 7,210.00             |
| 7-7218-00     | Clarion County.....                            | 27,719.00             | 3,497.00             |
| 7-7220-00     | Clearfield County.....                         | 56,188.00             | 7,089.00             |
| 7-7222-00     | Clinton County.....                            | 25,054.00             | 3,161.00             |
| 7-7224-00     | Columbia County.....                           | 33,242.00             | 4,194.00             |
| 7-7226-00     | Crawford County.....                           | 50,438.00             | 6,364.00             |
| 7-7230-00     | Dauphin County.....                            | 108,856.00            | 13,734.00            |
| 7-7242-00     | Erie County.....                               | 151,890.00            | 19,164.00            |
| 7-7246-00     | Fayette County.....                            | 98,438.00             | 12,420.00            |
| 7-7254-00     | Greene County.....                             | 27,894.00             | 3,519.00             |
| 7-7256-00     | Huntingdon County.....                         | 28,817.00             | 3,636.00             |
| 7-7258-00     | Indiana County.....                            | 57,599.00             | 7,267.00             |
| 7-7260-00     | Jefferson County.....                          | 28,643.00             | 3,614.00             |
| 7-7264-00     | Lackawanna County.....                         | 109,937.00            | 13,871.00            |
| 7-7268-00     | Lancaster County.....                          | 142,656.00            | 17,999.00            |
| 7-7282-00     | Luzerne County.....                            | 205,587.00            | 25,939.00            |
| 7-7290-00     | Mifflin County.....                            | 27,214.00             | 3,434.00             |
| 7-7306-00     | Northumberland County.....                     | 62,634.00             | 7,902.00             |
| 7-7310-00     | Philadelphia City/County.....                  | 755,706.00            | 95,347.00            |
| 7-7320-00     | Somerset County.....                           | 46,919.00             | 5,920.00             |
| 7-7324-00     | Susquehanna County.....                        | 20,001.00             | 2,524.00             |
| 7-7326-00     | Tioga County.....                              | 19,165.00             | 2,418.00             |
| 7-7334-00     | Washington County.....                         | 118,718.00            | 14,979.00            |
| 7-7336-00     | Wayne County.....                              | 17,998.00             | 2,271.00             |
| 7-7338-00     | Westmoreland County.....                       | 234,979.00            | 29,647.00            |
| 7-7344-00     | State Set-Aside Committee, PA.....             | 777,097.00            | 0.00                 |
| Total.....    |  | 4,614,151.00          | 484,119.00           |
| Rhode Island: |  |                       |                      |
| 7-7354-00     | Providence County.....                         | 206,754.00            | 26,086.00            |
| 7-7368-00     | State Set-Aside Committee, RI.....             | 58,918.00             | 0.00                 |
| Total.....    |  | 265,672.00            | 26,086.00            |
| Tennessee:    |  |                       |                      |
| 7-7720-00     | Lawrence County.....                           | 25,820.00             | 3,258.00             |
| 7-7728-00     | McMinn County.....                             | 24,845.00             | 3,135.00             |
| 7-7730-00     | McNairy County.....                            | 18,625.00             | 2,350.00             |
| 7-7734-00     | Madison County.....                            | 47,929.00             | 6,047.00             |
| 7-7738-00     | Marion County.....                             | 18,642.00             | 2,352.00             |
| 7-7742-00     | Maury County.....                              | 28,259.00             | 3,565.00             |
| 7-7746-00     | Monroe County.....                             | 20,559.00             | 2,594.00             |
| 7-7748-00     | Montgomery County.....                         | 39,323.00             | 4,961.00             |
| 7-7766-00     | Putnam County.....                             | 25,629.00             | 3,234.00             |
| 7-7768-00     | Rhea County.....                               | 17,597.00             | 2,220.00             |
| 7-7770-00     | Roane County.....                              | 25,054.00             | 3,161.00             |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|            |   | Public Law<br>100-404 | Public Law<br>101-45 |
|------------|---|-----------------------|----------------------|
| 7-7772-00  | Robertson County.....                       | 20,977.00             | 2,647.00             |
| 7-7774-00  | Rutherford County.....                      | 48,557.00             | 6,126.00             |
| 7-7780-00  | Sevier County.....                          | 46,571.00             | 5,878.00             |
| 7-7782-00  | Shelby County.....                          | 360,997.00            | 45,547.00            |
| 7-7790-00  | Sullivan County.....                        | 83,524.00             | 10,538.00            |
| 7-7804-00  | Warren County.....                          | 19,775.00             | 2,495.00             |
| 7-7804-00  | Washington County.....                      | 45,055.00             | 5,685.00             |
| 7-7818-00  | State Set-Aside Committee, TN.....          | 306,873.00            | 0.00                 |
| Total..... |   | 2,160,816.00          | 233,910.00           |
| Texas:     |   |                       |                      |
| 7-7820-00  | Abilene/Jones, Taylor Counties.....         | 80,754.00             | 10,189.00            |
| 7-7824-00  | Austin/Travis, Williamson Counties.....     | 456,316.00            | 57,573.00            |
| 7-7826-00  | Dallas/Collin, Dallas, Denton Counties..... | 1,375,359.00          | 173,528.00           |
| 7-7828-00  | Houston/Fort Bend, Harris Counties.....     | 2,122,344.00          | 267,775.00           |
| 7-7830-00  | Longview/Gregg, Harrison Counties.....      | 137,969.00            | 17,407.00            |
| 7-7856-00  | Anderson County.....                        | 35,612.00             | 4,493.00             |
| 7-7860-00  | Angelina County.....                        | 46,971.00             | 5,926.00             |
| 7-7868-00  | Atascosa County.....                        | 20,210.00             | 2,550.00             |
| 7-7876-00  | Bastrop County.....                         | 22,127.00             | 2,792.00             |
| 7-7880-00  | Bee County.....                             | 18,451.00             | 2,328.00             |
| 7-7882-00  | Bell County.....                            | 105,912.00            | 13,363.00            |
| 7-7886-00  | Bexar County.....                           | 797,433.00            | 100,612.00           |
| 7-7896-00  | Bowie County.....                           | 57,495.00             | 7,254.00             |
| 7-7900-00  | Brazoria County.....                        | 131,854.00            | 16,636.00            |
| 7-7902-00  | Brazos County.....                          | 51,745.00             | 6,529.00             |
| 7-7912-00  | Brown County.....                           | 21,099.00             | 2,662.00             |
| 7-7920-00  | Calhoun County.....                         | 18,137.00             | 2,288.00             |
| 7-7924-00  | Cameron County.....                         | 243,393.00            | 30,709.00            |
| 7-7934-00  | Cass County.....                            | 26,901.00             | 3,394.00             |
| 7-7940-00  | Cherokee County.....                        | 24,235.00             | 3,058.00             |
| 7-7972-00  | Coryell County.....                         | 24,827.00             | 3,132.00             |
| 7-8028-00  | Ector County.....                           | 84,534.00             | 10,666.00            |
| 7-8034-00  | Ellis County.....                           | 60,840.00             | 7,676.00             |
| 7-8036-00  | El Paso County.....                         | 447,918.00            | 56,514.00            |
| 7-8044-00  | Fannin County.....                          | 18,973.00             | 2,394.00             |
| 7-8066-00  | Galveston County.....                       | 194,575.00            | 24,549.00            |
| 7-8092-00  | Guadalupe County.....                       | 28,625.00             | 3,612.00             |
| 7-8094-00  | Hale County.....                            | 19,165.00             | 2,418.00             |
| 7-8104-00  | Hardin County.....                          | 35,647.00             | 4,498.00             |
| 7-8122-00  | Hays County.....                            | 34,915.00             | 4,405.00             |
| 7-8126-00  | Henderson County.....                       | 39,410.00             | 4,972.00             |
| 7-8128-00  | Hidalgo County.....                         | 463,215.00            | 58,444.00            |
| 7-8138-00  | Hopkins County.....                         | 18,573.00             | 2,343.00             |
| 7-8142-00  | Howard County.....                          | 20,489.00             | 2,585.00             |
| 7-8146-00  | Hunt County.....                            | 43,678.00             | 5,511.00             |
| 7-8158-00  | Jasper County.....                          | 31,709.00             | 4,001.00             |
| 7-8162-00  | Jefferson County.....                       | 200,359.00            | 25,279.00            |
| 7-8170-00  | Jim Wells County.....                       | 35,803.00             | 4,517.00             |
| 7-8180-00  | Kaufman County.....                         | 31,082.00             | 3,922.00             |
| 7-8196-00  | Kleberg County.....                         | 21,395.00             | 2,699.00             |
| 7-8200-00  | Lamar County.....                           | 31,256.00             | 3,944.00             |
| 7-8214-00  | Liberty County.....                         | 43,574.00             | 5,498.00             |
| 7-8226-00  | Lubbock County.....                         | 117,028.00            | 14,765.00            |
| 7-8234-00  | McLennan County.....                        | 130,095.00            | 16,414.00            |
| 7-8248-00  | Matagorda County.....                       | 45,874.00             | 5,788.00             |
| 7-8250-00  | Maverick County.....                        | 67,199.00             | 8,478.00             |
| 7-8256-00  | Midland County.....                         | 67,251.00             | 8,485.00             |
| 7-8268-00  | Montgomery County.....                      | 109,205.00            | 13,778.00            |
| 7-8276-00  | Nacogdoches County.....                     | 30,995.00             | 3,911.00             |
| 7-8278-00  | Navarro County.....                         | 31,639.00             | 3,992.00             |
| 7-8284-00  | Nueces County.....                          | 253,169.00            | 31,842.00            |
| 7-8292-00  | Orange County.....                          | 93,472.00             | 11,793.00            |
| 7-8294-00  | Palo Pinto County.....                      | 17,701.00             | 2,233.00             |
| 7-7804-00  | Polk County.....                            | 19,322.00             | 2,438.00             |
| 7-8306-00  | Potter County.....                          | 71,416.00             | 9,011.00             |
| 7-8336-00  | Rusk County.....                            | 32,145.00             | 4,056.00             |
| 7-8344-00  | San Patricio County.....                    | 56,728.00             | 7,157.00             |
| 7-8358-00  | Smith County.....                           | 110,355.00            | 13,923.00            |
| 7-8364-00  | Starr County.....                           | 99,762.00             | 12,587.00            |
| 7-8376-00  | Tarrant County.....                         | 731,786.00            | 92,329.00            |
| 7-8402-00  | Titus County.....                           | 18,938.00             | 2,389.00             |
| 7-8404-00  | Tom Green County.....                       | 48,052.00             | 6,063.00             |
| 7-8416-00  | Upshur County.....                          | 25,489.00             | 3,216.00             |
| 7-8420-00  | Uvalde County.....                          | 23,068.00             | 2,910.00             |
| 7-8422-00  | Val Verde County.....                       | 37,424.00             | 4,722.00             |
| 7-8424-00  | Van Zandt County.....                       | 22,301.00             | 2,814.00             |
| 7-8426-00  | Victoria County.....                        | 52,338.00             | 6,603.00             |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|  | Public Law<br>100-404 | Public Law<br>101-45 |
|--|-----------------------|----------------------|
| 7-8430-00 Walker County.....                     | 19,130.00             | 2,414.00             |
| 7-8438-00 Webb County.....                       | 119,990.00            | 15,139.00            |
| 7-8442-00 Wharton County.....                    | 27,859.00             | 3,515.00             |
| 7-8446-00 Wichita County.....                    | 73,245.00             | 9,241.00             |
| 7-8452-00 Willacy County.....                    | 21,691.00             | 2,737.00             |
| 7-8464-00 Wood County.....                       | 18,747.00             | 2,365.00             |
| 7-8472-00 Zavala County.....                     | 20,611.00             | 2,600.00             |
| 7-8474-00 State Set-Aside Committee, TX.....     | 2,068,392.00          | 0.00                 |
| Total.....                                       | 12,407,296.00         | 1,304,453.00         |
| Utah:  |                       |                      |
| 7-8480-00 Cache County.....                      | 20,541.00             | 2,592.00             |
| 7-8510-00 Salt Lake County.....                  | 320,489.00            | 40,436.00            |
| 7-8528-00 Utah County.....                       | 98,264.00             | 12,398.00            |
| 7-8540-00 Weber County.....                      | 86,956.00             | 10,971.00            |
| 7-8544-00 State Set-Aside Committee, UT.....     | 116,500.00            | 0.00                 |
| Total.....                                       | 642,750.00            | 66,397.00            |
| Vermont:   |                       |                      |
| 7-8568-00 Rutland County.....                    | 19,095.00             | 2,409.00             |
| 7-8576-00 State Set-Aside Committee, VT.....     | 230,950.00            | 0.00                 |
| Total.....                                       | 250,000.00            | 2,409.00             |
| Virginia:  |                       |                      |
| 7-8610-00 Buchanan County.....                   | 26,970.00             | 3,403.00             |
| 7-8664-00 Halifax County.....                    | 18,050.00             | 2,277.00             |
| 7-8702-00 Montgomery County.....                 | 29,183.00             | 3,682.00             |
| 7-8720-00 Pittsylvania County.....               | 34,497.00             | 4,352.00             |
| 7-8742-00 Russell County.....                    | 23,033.00             | 2,906.00             |
| 7-8748-00 Smyth County.....                      | 20,559.00             | 2,594.00             |
| 7-8760-00 Tazewell County.....                   | 31,796.00             | 4,012.00             |
| 7-8764-00 Washington County.....                 | 24,618.00             | 3,106.00             |
| 7-8768-00 Wise County.....                       | 25,768.00             | 3,251.00             |
| 7-8784-00 Chesapeake City.....                   | 49,080.00             | 6,192.00             |
| 7-8792-00 Danville City.....                     | 24,252.00             | 3,060.00             |
| 7-8806-00 Hampton City.....                      | 57,617.00             | 7,269.00             |
| 7-8814-00 Lynchburg City.....                    | 28,155.00             | 3,552.00             |
| 7-8822-00 Newport News City.....                 | 64,307.00             | 8,114.00             |
| 7-8824-00 Norfolk City.....                      | 86,608.00             | 10,927.00            |
| 7-8828-00 Petersburg City.....                   | 20,210.00             | 2,550.00             |
| 7-8832-00 Portsmouth City.....                   | 55,055.00             | 6,946.00             |
| 7-8836-00 Richmond City.....                     | 92,845.00             | 11,714.00            |
| 7-8838-00 Roanoke City.....                      | 43,905.00             | 5,539.00             |
| 7-8846-00 Suffolk City.....                      | 28,991.00             | 3,658.00             |
| 7-8856-00 State Set-Aside Committee, VA.....     | 622,687.00            | 0.00                 |
| Total.....                                       | 1,408,186.00          | 99,104.00            |
| Washington:                                      |                       |                      |
| 7-8862-00 Benton County.....                     | 79,621.00             | 10,046.00            |
| 7-8864-00 Chelan County.....                     | 49,742.00             | 6,276.00             |
| 7-8866-00 Clallam County.....                    | 36,448.00             | 4,599.00             |
| 7-8868-00 Clark County.....                      | 138,718.00            | 17,502.00            |
| 7-8872-00 Cowlitz County.....                    | 54,916.00             | 6,929.00             |
| 7-8874-00 Douglas County.....                    | 18,329.00             | 2,313.00             |
| 7-8878-00 Franklin County.....                   | 30,768.00             | 3,882.00             |
| 7-8882-00 Grant County.....                      | 48,191.00             | 6,080.00             |
| 7-8884-00 Grays Harbor County.....               | 49,167.00             | 6,203.00             |
| 7-8890-00 King County.....                       | 778,722.00            | 98,251.00            |
| 7-8898-00 Kittitas County.....                   | 20,384.00             | 2,572.00             |
| 7-8900-00 Klickitat County.....                  | 20,715.00             | 2,614.00             |
| 7-8902-00 Lewis County.....                      | 45,386.00             | 5,726.00             |
| 7-8906-00 Mason County.....                      | 18,573.00             | 2,343.00             |
| 7-8908-00 Okanogan County.....                   | 34,758.00             | 4,385.00             |
| 7-8914-00 Pierce County.....                     | 315,942.00            | 39,862.00            |
| 7-8920-00 Skagit County.....                     | 62,791.00             | 7,922.00             |
| 7-8924-00 Snohomish County.....                  | 235,154.00            | 29,669.00            |
| 7-8928-00 Spokane County.....                    | 203,026.00            | 25,616.00            |
| 7-8932-00 Stevens County.....                    | 20,437.00             | 2,579.00             |
| 7-8938-00 Walla Walla County.....                | 34,375.00             | 4,337.00             |
| 7-8940-00 Whatcom County.....                    | 84,813.00             | 10,701.00            |
| 7-8944-00 Yakima County.....                     | 183,112.00            | 23,103.00            |
| 7-8948-00 State Set-Aside Committee, WA.....     | 137,817.00            | 0.00                 |
| Total.....                                       | 2,701,905.00          | 323,510.00           |
| West Virginia:                                   |                       |                      |
| 7-8950-00 huntington/Wayne, Cabell Counties..... | 85,823.00             | 10,828.00            |



## EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

|  | Public Law<br>100-404 | Public Law<br>101-45 |
|--|-----------------------|----------------------|
| 7-8956-00 Berkeley County.....                             | 25,890.00             | 3,267.00             |
| 7-8958-00 Boone County.....                                | 28,800.00             | 3,634.00             |
| 7-8974-00 Fayette County.....                              | 38,643.00             | 4,876.00             |
| 7-8980-00 Greenbrier County.....                           | 31,552.00             | 3,981.00             |
| 7-8988-00 Harrison County.....                             | 66,084.00             | 8,338.00             |
| 7-8990-00 Jackson County.....                              | 21,918.00             | 2,765.00             |
| 7-8944-00 Kanawha County.....                              | 149,730.00            | 18,891.00            |
| 7-9000-00 Lincoln County.....                              | 21,343.00             | 2,693.00             |
| 7-9002-00 Logan County.....                                | 37,615.00             | 4,746.00             |
| 7-9004-00 McDowell County.....                             | 44,672.00             | 5,536.00             |
| 7-9006-00 Marion County.....                               | 45,578.00             | 5,751.00             |
| 7-9008-00 Marshall County.....                             | 26,709.00             | 3,370.00             |
| 7-9010-00 Mason County.....                                | 22,074.00             | 2,785.00             |
| 7-9012-00 Mercer County.....                               | 46,065.00             | 5,812.00             |
| 7-9016-00 Mingo County.....                                | 23,764.00             | 2,998.00             |
| 7-9018-00 Monongalia County.....                           | 35,211.00             | 4,443.00             |
| 7-9024-00 Nicholas County.....                             | 22,092.00             | 2,787.00             |
| 7-9026-00 Ohio County.....                                 | 31,483.00             | 3,972.00             |
| 7-9034-00 Preston County.....                              | 19,653.00             | 2,480.00             |
| 7-9036-00 Putnam County.....                               | 31,221.00             | 3,939.00             |
| 7-9038-00 Raleigh County.....                              | 69,690.00             | 8,793.00             |
| 7-9040-00 Randolph County.....                             | 24,165.00             | 3,049.00             |
| 7-9054-00 Upshur County.....                               | 21,447.00             | 2,706.00             |
| 7-9066-00 Wade County.....                                 | 56,728.00             | 7,157.00             |
| 7-9068-00 Wyoming County.....                              | 29,078.00             | 3,669.00             |
| 7-9070-00 State Set-Aside Committee, WV.....               | 155,284.00            | 0.00                 |
| Total.....   | 1,212,312.00          | 133,366.00           |
| Wisconsin:   |                       |                      |
| 7-9072-00 Eau Claire/Chippewa,Eau Claire Count.....        | 67,843.00             | 8,560.00             |
| 7-9100-00 Barron County.....                               | 24,374.00             | 3,075.00             |
| 7-9104-00 Brown County.....                                | 100,755.00            | 12,712.00            |
| 7-9120-00 Clark County.....                                | 19,827.00             | 2,502.00             |
| 7-9122-00 Columbia County.....                             | 33,558.00             | 4,234.00             |
| 7-9126-00 Dane County.....                                 | 130,408.00            | 16,453.00            |
| 7-9132-00 Door County.....                                 | 28,225.00             | 3,561.00             |
| 7-9148-00 Grant County.....                                | 23,311.00             | 2,941.00             |
| 7-9164-00 Kenosha County.....                              | 59,324.00             | 7,485.00             |
| 7-9170-00 La Crosse County.....                            | 42,320.00             | 5,339.00             |
| 7-9190-00 Milwaukee County.....                            | 443,162.00            | 55,913.00            |
| 7-9216-00 Portage County.....                              | 34,375.00             | 4,337.00             |
| 7-9220-00 Racine County.....                               | 91,260.00             | 11,514.00            |
| 7-9226-00 Rock County.....                                 | 81,921.00             | 10,336.00            |
| 7-9244-00 Trempealeau County.....                          | 17,562.00             | 2,216.00             |
| 7-9272-00 State Set-Aside Committee, WI.....               | 604,375.00            | 0.00                 |
| Total.....   | 1,802,598.00          | 151,178.00           |
| Wyoming:   |                       |                      |
| 7-9280-00 Campbell County.....                             | 20,106.00             | 2,537.00             |
| 7-9288-00 Fremont County.....                              | 24,357.00             | 3,073.00             |
| 7-9302-00 Natrona County.....                              | 44,009.00             | 5,553.00             |
| 7-9316-00 Sweetwater County.....                           | 29,723.00             | 3,750.00             |
| 7-9326-00 State Set-Aside Committee, WY.....               | 131,805.00            | 0.00                 |
| Total.....   | 250,000.00            | 14,913.00            |
| American Samoa: 7-9328-00 American Samoa.....              | 66,060.00             | 8,335.00             |
| Guam: 7-9330-00 Guam.....                                  | 62,730.00             | 7,915.00             |
| Northern Marianas: 7-9332-00 Northern Mariana Islands..... | 39,414.00             | 4,973.00             |
| Puerto Rico: 7-9334-00 Puerto Rico.....                    | 1,646,995.00          | 207,800.00           |
| Trust Territories: 7-9338-00 Trust Territories.....        | 221,021.00            | 0.00                 |
| Virgin Islands: 7-9340-00 Virgin Islands.....              | 86,600.00             | 10,926.00            |

[FR Doc. 89-19619 Filed 8-22-89; 8:45 am]

BILLING CODE 6718-02-M

[Docket: FEMA-REP-3-PA-2]

**Radiological Emergency Response Plan; Pennsylvania****AGENCY:** Federal Emergency Management Agency.**ACTION:** Notice of receipt of plans.

**SUMMARY:** For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has the responsibility for reviewing the State and local governments' plans, the Commonwealth of Pennsylvania has submitted radiological emergency response plans to the FEMA Regional

Office. These plans support nuclear power plants which impact on Pennsylvania and include the plans of Columbia and Luzerne Counties which are near the Pennsylvania Power and Light Company's Susquehanna Steam Electric Station, located in Luzerne County, Pennsylvania.

**DATE PLANS RECEIVED:** August 15, 1989.**FOR FURTHER INFORMATION CONTACT:** Paul P. Giordano, Regional Director,



FEMA Region III, Liberty Square Building, 105 S. 7th Street, Philadelphia, Pennsylvania 19106.

**NOTICE:** In support of the Federal requirement for emergency response plans, FEMA has established a Rule describing its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to this FEMA Rule (44 CFR 350.8) "Review and Approval of State Radiological Emergency Plans and Preparedness," the Commonwealth of Pennsylvania Disaster Operations Plan, Annex E was received by the Federal Emergency Management Agency Region III Office.

Included are the plans for Columbia and Luzerne Counties and twenty-seven municipalities, which are fully or partially within the plume exposure pathway emergency planning zone of the nuclear plant. Also included are the emergency plans for nine schools and school districts, seven support counties, and thirteen counties that are partly or wholly within the ingestion pathway emergency planning zone.

Copies of the Plan are available for review at the FEMA Region III Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR part 5. There are 5760 pages in the document, reproduction fees are \$.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Paul P. Giordano, Regional Director, at the above address within thirty days of this Federal Register Notice.

Paul P. Giordano,  
Regional Director.

[FR Doc. 89-19829 Filed 8-22-89; 8:45 am]

BILLING CODE 6718-20-M

## FEDERAL MARITIME COMMISSION

### Georgia Port Authority Terminal Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for

comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

**Agreement No.: 224-200254-001**

**Title:** Georgia Ports Authority Terminal Agreement

**Parties:** Georgia Ports Authority Columbus Line

**Synopsis:** The Agreement revises paragraph 2 of the basic agreement (Agreement No. 224-200254) to provide that if the renewal option is exercised, the basic agreement will be amended and filed with the Federal Maritime Commission.

By Order of the Federal Maritime Commission.

Dated: August 18, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19826 Filed 8-22-89; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

[Program Announcement Number 946]

### Development of Environmental Short Courses for Health Professionals

#### Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of funds for a Cooperative Agreement with the National Association of County Health Officials (NACHO) in Fiscal Year 1989 for educating health professionals concerning the surveillance, diagnosis and treatment of persons exposed to hazardous substances.

#### Authority

This program is authorized under section 104(i)(14) and section 104(i)(15) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. 9604(i)(14), (15)).

#### Eligible Applicant

This is not a formal request for applications. Assistance will be provided only to the National Association of County Health Officials (NACHO). NACHO is the only umbrella health organization that represents all local (city, county, town and township) political jurisdictions. Approximately 400 jurisdictions are represented. In

addition, the organization serves 3,000 local health departments. A majority of these health departments are directed by a physician, the chief public health official of the locality. By working through its own membership, the NACHO Executive Committee, and United States Conference of Local Health Officers, Black Health Officials, and Town and Township members, NACHO has developed a unique knowledge and understanding of the needs and operations of all local health agencies. The members of NACHO have already gained an enormous wealth of experience in surveillance and educational activities dealing with hazardous substances. As an organization, NACHO has direct and familiar access to its own health membership of chief local public health officials and their affiliated networks. Therefore, NACHO has the capacity to meet the objectives of this agreement in a timely and efficient manner. No other applications are solicited or will be accepted.

#### Availability of Funds

A minimum of \$200,000 will be available in Fiscal Year 1989. It is expected that the award will begin on or about September 30, 1989, for a 12-month budget period within an 18-month project period. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

#### Purpose

The purpose of this award is to develop and implement through instructional mechanisms a series of short courses to improve the knowledge and practice of county/city health professionals concerning the surveillance, screening and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances.

#### Program Requirements

The specific Cooperative Activities, Application Content and Evaluation Criteria are set forth in the Request for Application (RFA) Program Announcement.

#### EO 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

#### CFDA Number

The catalog of Federal Domestic Assistance Number is 13.161, Health



Programs for Toxic Substances and Disease Registry.

#### Application Submission and Deadline

NACHO must submit an original and two copies of application form PHS 5161-1 (Rev. 3/98) to Henry S. Cassell, III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NW., Room 300, Atlanta, Georgia 30305, on or before August 25, 1989. By formal agreement, the CDC Grants Office will act on behalf of and for ATSDR on this matter.

#### Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 946 and contact the following: Business: Harvey Rowe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E14, Atlanta, Georgia 30305, or by calling (404) 842-6797 or FTS 236-6797. Technical assistance may be obtained from Max Lum, Ed.D., Agency for Toxic Substances and Disease Registry, Office of External Affairs, (404) 488-4630 or FTS 236-4630.

Dated: August 17, 1989.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89-19817 Filed 8-22-89; 8:45 am]

BILLING CODE 4160-70-M

[Announcement No. 001]-

#### Centers for Disease Control

#### Availability of Funds for Fiscal Year 1990 for Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection

##### Introduction

The Centers for Disease Control (CDC) announces a program for competitive cooperative agreement and/or research project grant applications to conduct epidemiologic research studies of AIDS and HIV infection. These include studies of: the natural history of HIV infection in homosexual males and their male sex partners and natural history studies of HIV-infected transfusion recipients. The study of these research areas as they pertain to minority populations is encouraged because minorities constitute over 43% of all reported cases of AIDS.

#### Authority

These cooperative agreements and/or grants are authorized under sections 301(a), 311, and 317(k)(3) of the Public Health Service Act, as amended. Regulations are set forth in 42 CFR 52, entitled "Grants for Research Projects."

#### Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, State and local health departments and small, minority and/or women-owned businesses are eligible for these grants and/or cooperative agreements.

#### Availability of Funds

Approximately \$1,700,000 will be available in fiscal year 1990 to fund approximately 6 awards. It is expected that the average award will be approximately \$275,000, ranging from \$90,000 to \$500,000. It is expected that about 3 new and 3 competing renewal awards will be made and that awards will begin on or about November 1, 1989 and May 1, 1990. Awards are usually made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

#### Purpose

The purpose of these awards is to help support researchers in the study of important HIV-related epidemiologic issues concerning risks of transmission, the natural history and trends of the disease in certain populations, and the development and evaluation of behavioral recommendations for reducing AIDS and HIV infection. Of special interest are programs that examine these research issues as they impact on minority populations.

Two research issues of programmatic interest to the health care community and to CDC for FY 1990 are listed below, and they are considered to be of significant importance in gaining a greater understanding of the epidemiology of AIDS and HIV infection. However, applications submitted by organizations that examine other important HIV-related epidemiologic research issues will also be accepted and considered for funding.

#### 1. Prospective Epidemiologic Study of the Natural History of Transfusion-Associated HIV Infection.

Studies should be designed to identify a cohort of HIV-infected transfusion

recipients and to perform periodic clinical evaluations of the participants. Preference will be given to studies of transfused children and to proposals in which a cohort of HIV-infected blood transfusion recipients has already been established and is currently being followed. Proposals should demonstrate capacity to evaluate all participants for HIV-related neurologic disease, and to assess the growth and development of pediatric participants. Laboratory studies should include blood cell counts and lymphocyte studies but other immunologic and virologic studies related to HIV infection will also be considered. Competing renewal awards for this study will be made on or about October 30, 1989.

#### 2. Natural History Study of HIV Infection in Homosexual Partner-Pairs

Studies should be designed to enroll HIV seropositive and HIV seronegative homosexual men and their steady sex partners (partners-pairs) for prospective evaluation of the effects of behavioral and biologic factors on the transmission of HIV infection. Biologic studies should include immunologic and virologic analysis of blood and semen. Appropriate counseling and risk reduction education must be provided to subjects at risk for infection. Competing renewal awards for this study will be made on or about April 30, 1990.

#### Program Requirements

##### 1. Research Project Grants

A research project grant is one in which substantial programmatic involvement by CDC is not anticipated by the recipient during the project period. Applicants for grants must demonstrate an ability to conduct the proposed research with minimal assistance, other than financial support, from CDC. This would include possessing sufficient resources for clinical, laboratory, and data management services and a level of scientific expertise to achieve the objectives described in their research proposal without substantial technical assistance from CDC.

##### 2. Cooperative Agreements

A cooperative agreement implies that CDC will assist the collaborator in conducting the epidemiologic research of AIDS and HIV infection that is described in the Purpose section of this notice. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with CDC. In addition to the financial support



provided, CDC will collaborate by: (1) Providing technical assistance in the design and conduct of the research; (2) providing technical guidance in the development of study protocols, consent forms, and questionnaires, including training and pretesting as necessary; (3) assisting in designing a data management system; (4) performing selected laboratory tests; (5) coordinating research activities among the different sites, including laboratories and consultants; and (6) participating in the analysis of research information and the presentation of research findings.

### 3. Determination of Which Instrument To Use

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. The funding agency will review the applications in accordance with the evaluation criteria. The CDC will determine before making each award whether the use of a grant or cooperative agreement is appropriate based upon the need for substantial Federal involvement in the project.

### Evaluation Criteria

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicants' abilities to meet the following criteria:

1. The plans to develop and implement the study describing how study participants will be identified, enrolled, tested, and followed. (25 points)
2. The ability to enroll and follow an adequate number of eligible study participants to assure proper conduct of the study. The known or projected prevalence of HIV infection in the population to be studied will be an important area of consideration. (25 points)
3. The applicant's current activities in AIDS and HIV research and how they will be applied to achieving the objectives of the study. Letters of support from cooperating organizations should be included that demonstrate the nature and extent of such cooperation. (25 points)
4. The applicant's understanding of the research study objectives and its ability, willingness and/or need to cooperate in a study with CDC. (15 points)
5. The plan to protect the rights and confidentiality of all participants and ensure adequate participation. (15 points)
6. The size, qualifications, and time allocation of the proposed staff and the

availability of facilities to be used during the research study. (15 points)

7. How the project will be administered to assure the proper management of the daily activities of the program. (10 points)

8. The proposed schedule for accomplishing the activities of the research, including time frames. (10 points)

9. The quality of an evaluation plan which specifies the methods and instruments to be used to evaluate the progress made in attaining research objectives. (10 points)

(A maximum of 150 points can be awarded.)

The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, and consistent with the intended use of funds. Budget information should be specific to the purpose of each budget item, and all budget categories should be itemized.

### Funding Priorities

Preference will be given to competing continuation applications over applications for projects not already receiving support under the program.

### Other Requirements

#### 1. Paperwork Reduction Act

The projects that will be funded through the cooperative agreement mechanism of this program that involve the collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

#### 2. Human Subjects

This program involves research on human subjects, therefore, all applicants must comply with Public Law 93-148 regarding the protection of human subjects. Assurances must be provided that demonstrate that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

#### 3. HIV Program Review Panel

Recipients must comply with the requirement to establish an HIV Program Review Panel as defined in the document entitled, "CONTENT OF AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND

EDUCATIONAL SESSIONS (OCTOBER 1988)." (54 FR 10049, March 9, 1989)

### E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

### Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.118, Acquired Immunodeficiency Syndrome (AIDS) Activity.

### Application Submission and Deadline

A signed original and two copies of the application form PHS 5161-1 must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 300, Atlanta, Georgia 30305, on or before September 22, 1989, for competing continuations of epidemiologic studies of the natural history of transfusion-associated HIV infection (F1), and February 1, 1990, for competing continuations of the natural history study of HIV infection in homosexual partner pairs (F2). Other applications submitted in response to this announcement may be submitted on or before either deadline date.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group.

(Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1. a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

### Where To Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Carole J. Tully or Marsha D. Driggans, Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 300, Atlanta,



Georgia 30305, (404) 842-6575 or FTS 236-6575.

Please refer to Announcement Number 001 when requesting information and submitting any application on the Request for Application.

Technical assistance may be obtained from John Narkunas, AIDS Program, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, (404) 639-2030 or FTS 236-2030.

Dated: August 17, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-19787 Filed 8-22-89; 8:45 am]

BILLING CODE 4160-18-M

#### [Program Announcement No. 922]

### **Development and Maintenance of a Human Immunodeficiency Virus (HIV)-Related Policy, Regulation and Legislation Tracking System for Rapid Communication To State and Local Health Agencies**

#### **Introduction**

The Centers for Disease Control (CDC), announces the availability of FY 1989 funds for a cooperative agreement with the Association of State and Territorial Health Officials (ASTHO) to identify and track those new HIV-related developments and issues that affect State and Territorial health departments.

#### **Authority**

This program is authorized under the Public Health Service Act: Section 317(k)(3).

#### **Eligible Applicants**

Assistance will be provided only to the Association of State and Territorial Health Officials (ASTHO) for this project. ASTHO is the officially established organization representing the State Health Officers in all 50 States, the District of Columbia, and all U.S. Territories. As such it represents the officials from throughout the U.S. who have legal responsibility for protecting the health of U.S. citizens, including health threats such as human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) which results from HIV infection.

Because health threats such as HIV are not limited by geographic boundaries, ASTHO was formed to promote coordination of health efforts between the States and Territories and as an instrument to monitor and assess health issues which pose threats to the public health.

It is critical that the health officials of this country monitor not only the medical issues that HIV/AIDS presents to them, but also the economic, policy and legislative issues which it poses to them in protecting the public health of the nation. As such, ASTHO needs to establish and maintain a system to monitor State HIV/AIDS policy issues as they are evolving and to develop and maintain a communications network which will facilitate rapid information sharing with other State health officials who have addressed similar policy issues. In addition, ASTHO needs to establish and maintain a system which will assist State and local health officials in implementing and coordinating applicable national HIV/AIDS programs, policies and legislation.

It is critical that ASTHO conduct these services since they are the representatives of the persons who will have to implement and coordinate relevant programs, policies and legislation. They are also the only organization which can reasonably evaluate the potential impact of Federal HIV/AIDS policies and legislation since they are the officials who must assess the policy and legislation in terms of existing State laws and regulations.

ASTHO already has established mechanisms for communicating certain types of information to the States and to the political subdivisions of the States which carry out the nation's public health programs. No other applications will be solicited or accepted.

#### **Availability of Funds**

Approximately \$60,000 is available in Fiscal Year 1989 to support this project. It is expected that the award will begin on or about September 29, 1989, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

#### **Purpose**

The proposed cooperative agreement is intended to address the need to identify and track new HIV-related developments and issues and facilitate the rapid exchange of critical information at the State and local levels in order to implement effective HIV prevention programs.

#### **Program Requirements**

A. ASTHO's activities will include the following:

1. Identify State HIV/AIDS-related policy issues as they are evolving.

2. Develop a communications network to assist health officials in the HIV/AIDS-related policy decision making process.

3. Provide assistance and coordination in the implementation of national HIV/AIDS-related policies and legislation by State and local health officials.

4. Serve as liaison to State-affiliated organizations as well as organizations representing local health officials for timely distribution and dissemination of national HIV/AIDS policies information.

B. CDC's activities will include the following:

1. Provide technical advice in the development of systems to identify State HIV/AIDS policy issues.

2. Provide technical advice in the development of systems to facilitate critical HIV/AIDS policy information sharing among State and local health officials in the decision making process.

3. Provide information, legislative and policy determinations for rapid dissemination and/or coordination and implementation.

#### **Evaluation Criteria**

The application will be reviewed and evaluated on the following:

1. Extent to which the applicant understands the requirements, problems, objectives, complexities, and interactions required of this cooperative agreement;

2. Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, and related to the purpose of this project;

3. Degree to which the applicant provides evidence of an ability to carry out the proposed project and the extent to which the applicant institution documents demonstrates capability to achieve objectives similar to those of this project;

4. Extent to which professional personnel involved in this project are qualified, including evidence of past achievements appropriate to this project; and

5. Adequacy of plans for administering the project.

#### **Executive Order 12372 Review**

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

#### **Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 13.118.



**Application Submission and Deadline**

The Association of State and Territorial Health Officials must submit an original and two copies of the application form PHS 5161-1 must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 300, Atlanta, Georgia 30305 on or before September 29, 1989.

**Where to Obtain Additional Information**

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 922 and contact the following:

**Business:**

Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 300, Atlanta, Georgia 30305, Telephone: (404) 842-6575 or FTS 236-6575.

**Technical:**

Gil Hawkins, (A-43), Office of Deputy Director (HIV), Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 639-0911 or FTS 236-0911.

Dated: August 17, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-19788 Filed 8-22-89; 8:45 am]

BILLING CODE 4160-18-M

**Food and Drug Administration**

[Docket No. 89N-0317]

**Information on Developing and Testing a New Acellular Pertussis Vaccine; Availability**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of information and materials developed by FDA scientists that the agency believes may be useful in developing and testing a new acellular pertussis vaccine.

**ADDRESSES:** Submit written requests for single copies of information on developing and testing a new acellular pertussis vaccine to the Center for Biologics Evaluation and Research (HFB-680), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892. Requests should be

identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The information is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Charles R. Manclark, Center for Biologics Evaluation and Research (HFB-680), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-496-5564.

**SUPPLEMENTARY INFORMATION:** As part of continuing efforts to improve the safety and effectiveness of pertussis vaccine, FDA scientists have compiled information and scientific data that may be of significant value in the development of a new acellular pertussis vaccine. A new method has been developed for purifying an outer membrane protein that appears to serve as a protective antigen in animal models and is a candidate for inclusion in an acellular vaccine. FDA scientists have also developed monoclonal antibodies against this protein moiety that can be used in monitoring the purification of the antigen. FDA scientists have applied for patents on this purification method and these monoclonal antibodies. FDA intends to release information regarding the new purification process and to distribute the monoclonal antibodies to interested parties for use in monitoring the purification of large volumes of the antigen.

Dated: August 18, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-19804 Filed 8-22-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0321]

**Bio-Rad Laboratories; Premarket Approval of Bio-Rad Cyclosporine by HPLC Test**

AGENCY: Food and Drug Administration. ACTION: Notice.

**SUMMARY:** Food and Drug Administration (FDA) is announcing its approval of the application by Bio-Rad Laboratories, Hercules, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Bio-Rad Cyclosporine by HPLC Test. After reviewing the recommendation of the Clinical Chemistry and Clinical

Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 24, 1989, of the approval of the application.

**DATES:** Petitions for administrative review by September 22, 1989.

**ADDRESSES:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:**

Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1096.

**SUPPLEMENTARY INFORMATION:** On January 6, 1989, Bio-Rad Laboratories, Hercules, CA 94547, submitted to CDRH an application for premarket approval of the Bio-Rad Cyclosporine by HPLC Test. The Bio-Rad Cyclosporine by HPLC Test is a cyclosporine assay by high performance liquid chromatography (HPLC) and is indicated for the quantitative measurement of cyclosporin A in whole blood as an aid in the management of renal transplant patients.

On May 15, 1989, the Clinical Chemistry and Clinical Toxicology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 24, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kaiser Aziz (HFZ-440), address above.

**Opportunity for Administration Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative



practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 22, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 16, 1989.

Walter E. Gundaker,  
Acting Deputy Director, Center for Devices  
and Radiological Health.

[FR Doc. 89-19803 Filed 8-22-89; 8:45 am]  
BILLING CODE 4160-01-M

## Health Care Financing Administration

### Privacy Act of 1974; Report of New System

**AGENCY:** Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

**ACTION:** Notice of New System of Records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Home Health Quality Indicator System (HHQIS)," HHS/HCFA/ORD No. 09-70-0046. We have provided background information

about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

**DATES:** HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on August 17, 1989. The new system of records, including routine uses, will become effective October 16, 1989 unless HCFA receives comments which would necessitate alterations to the system.

**ADDRESS:** The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room G-M-1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

**FOR FURTHER INFORMATION CONTACT:** Tony Hausner, Division of Long-Term Care, Office of Research and Demonstrations, Health Care Financing Administration, Room 2F5, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: 301-966-6662.

**SUPPLEMENTARY INFORMATION:** HCFA proposes to initiate a new system of records and to collect data under the authority of section 207 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) which mandates that the Secretary of Health and Human Services shall study long-term care services for Medicare beneficiaries, including home care.

The Privacy Act permits us to disclose information without consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the new system meet the compatibility criteria, since the information is collected for measuring the quality of Medicare home health services. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: August 15, 1989

Louis B. Hays,  
Acting Administrator, Health Care Financing  
Administration.

09-70-0046

#### SYSTEM NAME:

Home Health Quality Indicator System (HHQIS).

#### SECURITY CLASSIFICATION:

None.

#### SYSTEM LOCATION:

Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207 (Contact system manager for location of Magnetic Computerized records). Contractor (see Appendix A).

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare Beneficiaries.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information concerning the patient's name, Health Insurance Claim number, medical diagnoses, surgical procedures, conditions, problems, functional status, living arrangement, utilization of services, outcomes of care.

#### AUTHORITY OF MAINTENANCE OF THE SYSTEM:

Section 207 of Pub. L. 100-360.

#### Purpose of the System:

To assess the quality of Medicare home health care. To determine the appropriate balance between outcome, process, and structural measures for quality assurance purposes. To develop outcome-based measures of home health care quality that are reliable and valid. To evaluate the differential impacts of various types of outcome measures on the data collection and administrative costs for HCFA and home health agencies. To determine how differences in patient outcomes are related to differences in patient characteristics, and how case mix differences can be recognized in outcome-based quality indicators.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made to:

1. A contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP



or telecommunications system containing or supporting records in the system.

2. A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

3. The Department of Justice, to a court or other tribunal, or to another party before such a tribunal, when

a. HHS, or any component thereof; or  
b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components;

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained.

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that an additional exposure of the record might bring; and

(3) There is reasonable probability that the objective for the use would be accomplished.

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which

removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another research project, under these same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(d) When required by law.

d. Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions.

#### **Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System:**

##### **Storage:**

Paper and magnetic media.

##### **Retrievability:**

Records are retrieved by the Health Insurance Claim Number.

##### **Safeguards:**

a. Authorized Users: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of the criminal sanctions for unauthorized disclosure information.

b. Physical safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Contracts related to this system contain Privacy Act language.

d. Implementation Guidelines: Safeguards implemented in accordance

with all guidelines required by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with the Department of HHS' automated Data Processing Manual, part 6, "ADP System Security."

#### **Retention and Disposal:**

Records are retained for 5 years after the last action on the record.

#### **System Manager(s) and Address:**

Director, ORD, Health Care Financing Administration, 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

#### **Notification Procedures:**

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the Health Insurance Claim Number.

#### **Record Access Procedures:**

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).)

#### **Contesting Record Procedures:**

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete or not current). (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

#### **Records Source Categories:**

HCFA obtains the identifying information in this system from the home health patient records of which some will be verified by beneficiaries. In addition to these patient records other information will be obtained from interview with the patients and caregivers.

#### **Systems Exempted From Certain Provisions of the Act:**

None.

#### **Appendix A**

Policy Center, Inc., 1355 South Colorado Blvd., Suite 706, Denver, CO 80222.

[FR Doc. 89-19798 Filed 8-22-89; 8:45 am]

BILLING CODE 4120-03-M



**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**
**Office of Administration**

[Docket No. N-88-2037]

**Submission of Proposed Information  
Collections to the Office of  
Management and Budget**
**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ADDRESS:** Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Officer of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management

Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension,

reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 17, 1989.

**David S. Cristy,**

*Deputy Director, Information Policy and Management Division.*

**Proposal:** Public Housing—Life-Cycle Cost Analysis of Utility Combinations  
**Office:** Public and Indian Housing  
**Description of the Need for the Information and Its Proposed Use:** The Department will use the information collected to assure the selection of the most cost effective utilities, fuels, related mechanical equipment and methods of purchase for public housing projects.

**Form Number:** HUD-51994  
**Respondents:** State or Local Governments and Non-profit Institutions  
**Frequency of Submission:** On Occasion  
**Reporting Burden:**

|                     | Number of<br>respondents | x | Frequency of<br>response | x | Hours per<br>response | = | Burden hours |
|---------------------|--------------------------|---|--------------------------|---|-----------------------|---|--------------|
| HUD-51994 .....     | 250                      |   | 1                        |   | 6                     |   | 1,500        |
| Recordkeeping ..... | 250                      |   | 1                        |   | .25                   |   | 62           |

*Total Estimated Burden Hours: 1,562*

*Status:* Extension

*Contact:* William Thorson, HUD (202) 755-6460 John Allison, OMB, (202) 395-6880

*Date:* August 17, 1989.

*Proposal:* Survey of Mortgage Lending Activity

**Office:** Housing  
**Description of the Need for the Information and Its Proposed Use:** HUD-136 will be used to obtain information on the developments in the mortgage market. It will be used to monitor such developments and to provide statistical data to Federal, State, and non-governmental entities.

**Form Number:** HUD-136  
**Respondents:** State or Local Governments, Businesses or Other For-Profit, and Federal Agencies or Employees  
**Frequency of Submission:** Monthly  
**Reporting Burden:**

|               | Number of<br>respondents | x | Fre-<br>quency<br>of re-<br>sponse | x | Hours<br>per re-<br>sponse | = | Bur-<br>den<br>hours |
|---------------|--------------------------|---|------------------------------------|---|----------------------------|---|----------------------|
| HUD-136 ..... | 822                      |   | 12                                 |   | 1.50                       |   | 14,796               |



Total Estimated Burden Hours: 14,796

Status: Extension

Contact: John N. Dickie, HUD (202) 755-7270; John Allison, OMB, (202) 395-6880

Date: August 17, 1989.

[FR Doc. 89-19835 Filed 8-22-89; 8:45 am]

BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### Allocation of Bureau of Indian Affairs Operations and Maintenance (O&M) Program Using a Formula Methodology

AGENCY: Office of Construction Management, Interior.

ACTION: Notice.

The Department of the Interior, Bureau of Indian Affairs, and Office of Construction Management, have established an allocation formula for Facilities Operations and Maintenance funding which allows for an equitable distribution process at educational and non-educational locations beginning with the 1990 fiscal year.

Following four regional tribal consultations, held in Arlington, VA; Minneapolis, MN; Clackamas, OR and Albuquerque, NM in August 1988, to present the proposed allocation formula (refer to *Federal Register*, Vol. 53, No. 149, Wednesday, August 3, 1988), the following issues were voiced by Tribal membership:

1. The formula should reflect needs rather than be limited by historical cost data;
2. Room use, rather than building use, should be considered in calculating utilization of space;
3. The definition of utilization should be redefined;
4. Building inventories should be reviewed for accuracy; and
5. Distance to service centers should be calculated and more credit given to remote locations.

In order to address the concerns received by the Tribes, the formula was revised to include room use, clarify the definition of utilization and determine the distance to the service centers. The revised formula appears as follows:

- (1) Utilities + (2) Custodial + (3) Preventive Maintenance + (4) Unscheduled Maintenance + (5) Educational Efficiency (Utilization) + (6) Isolation + (7) Program support = (8) O&M budget at the local level.

The individual components are:

1. Utilities—The three year average of utility costs (obligations) at a location.

2. Custodial—Includes the material, supplies and labor for providing janitorial services to the location level summarized by the room and building use data.

3. Preventive Maintenance—Includes the materials, supplies, and labor required to perform scheduled work on the facility; its mechanical systems and utility systems which supply the facility; scheduled painting, and routine inspections of the facility.

4. Unscheduled Maintenance—Includes the materials, supplies, and labor required to perform the necessary minor repairs on facilities or utility systems generated either by a user request or breakdown of equipment.

The unscheduled maintenance was divided into two categories: (a) service calls, and (b) repairs.

5. Educational Efficiency—The effective use of space to achieve maximum efficiency of facilities funded through the Bureau's operation and maintenance program.

6. Isolation—The additional funds required to provide preventive maintenance services to a location because of its distance to the nearest equipment repair and supply center.

7. Program Support—The funds required to provide (a) particular services to users that cannot be identified to a building, and (b) the necessary personnel, materials and supplies to administer the Facilities Management Program. This includes the budgeting for monitoring, and evaluation of work accomplishments.

More specifically, at the Area level, program support includes: (a) fire protection; (b) major equipment purchase; (c) training; (d) personnel; (e) leave (sick & annual), and (f) travel, material, and supplies.

And, at the location/Agency level, program support includes: (a) personnel services; (b) leave (sick & annual); (c) contract monitoring; (d) communications; (e) site/central utilities; (f) protection/security services; (g) pest control, and (h) expendable equipment.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary, Bureau of Indian Affairs, was mandated by the Congress of the United States pursuant to Pub. L. 95-561, as amended under title 11 of the Education Amendments of 1978 (25 U.S.C. 2008 sec. 1128) to establish a formula for determining the minimum annual amount of funds necessary to sustain each Bureau or contract school. The Director, Office of Construction Management was also mandated in reports accompanying Appropriations Bills for FY 1986, FY 1987 and FY 1988 to

develop an equitable Operations and Maintenance funding formula, which considers utilization for Bureau funded school facilities.

The funding formula, as mandated, will provide:

1. A means of identifying and justifying O&M needs for both educational and non-educational facilities;
2. A means for allocating resources in an equitable manner for educational facilities;
3. Greater efficiency by providing resources in relationship to the number of pupils, thereby reducing under-utilization of educational facilities;
4. A method for predicting future needs, fiscal year expenses, and funding resources for facilities programs; and
5. Assistance to Tribes wishing to contract by giving a clearer picture of the custodial and preventive maintenance work required to maintain facilities, mechanical systems and utilities in good operational condition and estimates for staff and funding required to do so.

The formula will serve as a basis for allocating funds on an Area and Agency-wide basis for Bureau funded facilities beginning on the first day of Fiscal Year 1990 (October 1, 1989).

**FOR FURTHER INFORMATION CONTACT:** Arthur M. Love, Jr., Director, Office of Construction Management, Department of the Interior, 18th & C Streets, NW, Mail Stop 2415, Washington, DC 20240, (202) 343-2403.

Charles E. Kay,

Assistant Secretary, Policy, Budget & Administration.

[FR Doc. 89-19813 Filed 8-22-89; 8:45 am]

BILLING CODE 4310-RK-M

## Fish and Wildlife Service

### Availability of a Draft Recovery Plan for Canby's Dropwort for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for Canby's dropwort. This plant occurs on public and private lands in the coastal plain of North Carolina, South Carolina, Georgia, and Maryland. The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before



October 23, 1989 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nora Murdock at the above address (704/259-0321; FTS 672-0321).

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of time and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is Canby's dropwort (*Oxypolis canbyi*). The area of emphasis for recovery actions is the coastal plain of North Carolina, South Carolina, Georgia, and Maryland. Habitat protection and management are major objectives of this recovery plan.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. All

comments received by the date specified above will be considered prior to approval of the plan.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 14, 1989.

Brian P. Cole,  
Field Supervisor.

[FR Doc. 89-19811 Filed 8-22-89; 8:45 am]  
BILLING CODE 4310-55-M

**Bureau of Land Management**

[AZ040-09-4351-02]

**Call for Nominations for the San Pedro Riparian National Conservation Area Advisory Committee**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Call for Nominations—San Pedro Riparian National Conservation Area Advisory Committee.

**SUMMARY:** The purpose of this notice is to solicit public nominations to fill two positions whose terms expire this year on the Bureau of Land Management's San Pedro Riparian National Conservation Area Advisory Committee, which was established earlier this year, pursuant to section 104 of the Arizona-Idaho Conservation Act of 1988, Public Law 100-696.

The Committee is comprised of seven members. Under the Committee's staggered-term arrangement, the terms of two members of the Committee will expire on December 31, 1989. The current members may be reappointed, or new members may be appointed. However, the eligibility of current Committee members for reappointment may be affected by governing provisions in the Committee's Charter. The new terms will be for 3 years, ending December 31, 1992.

Appointments made by the Secretary of the Interior pursuant to this call will ensure continued representation of specific categories of interest on the Committee. Nominees must be persons with recognized backgrounds in the following disciplines: Environmental Education and Riparian Ecology.

The purpose of the Committee is to provide informed advice to the Bureau's Safford District Manager on the preparation and implementation of the comprehensive plan for the long-range management and protection of the San Pedro National Conservation Area, as required by section 103 of the Arizona-

Idaho Conservation Act of 1988, Public Law 100-696.

Members will service without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

The Committee normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on the Committee should contact the Safford District Manager at the address below and provide the names, addresses, professions, and other biographical data of qualified nominees.

**DATE:** All nominations should be received by September 25, 1989.

**ADDRESS:** Safford District, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546.

**FOR FURTHER INFORMATION CONTACT:** Cindy Alvarez, Planning and Environmental Coordinator, Safford District Office, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546. Telephone (602) 428-4040.

Dated: August 15, 1989.

Margaret Jensen,  
Acting District Manager.

[FR Doc. 89-19816 Filed 8-22-89; 8:45 am]  
BILLING CODE 4310-32-M

[UT-040-09-4212-12; 4-62299]

**Realty Action; Exchange of Surface and Mineral Interests in Public and Private Lands, Washington and Kane Counties, UT**

**AGENCY:** Interior, Bureau of Land Management.

**SUMMARY:** The Bureau of Land Management is considering a proposal to dispose of the following described public lands by exchange under section 206 of the Federal Land Policy and Management Act of 1976, (43 USC 1716): Salt Lake Meridian, Utah, T. 42 S., R. 14 W., sec. 8 NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ; sec. 9, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ ; sec. 17, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ ; sec. 18, lots 7, 11, 12, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ , NE $\frac{1}{4}$ NE $\frac{1}{4}$ ; containing 560 acres. In exchange for these lands, the United States will acquire lands of equal value from the State of Utah.

**ADDRESSES:** Requests for information can be sent to the Bureau of Land Management, Cedar City District, 178



East DL Sargent Drive, Cedar City, Utah 84720 (801/586-2401).

**SUPPLEMENTARY INFORMATION:** The purpose of this exchange is to acquire non-public lands valuable for their public recreational resources, and to improve the land ownership patterns of the public lands. The public lands described above are segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or two years from date of publication of this notice, whichever occurs first.

Dated: August 15, 1989.

Gordon R. Staker,  
District Manager.

[FR Doc. 89-19812 Filed 8-22-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-940-09-4214-10; CA 391]

### Cancellation of Withdrawal Application and Opening of Land; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Forest Service, U.S. Department of Agriculture, has cancelled in its entirety their withdrawal application for public land to be developed as a roadside rest adjacent to California State Highway 299 within the Six Rivers National Forest. This notice terminates the segregation imposed by the Notice of Proposed Withdrawal published in the *Federal Register* on December 19, 1973 (8 FR 34824), correction published January 28, 1974 (39 FR 3576), and notice republished on May 4, 1978 (43 FR 19295), and opens the land to the operation of the U.S. mining laws. This land has been and continues to be open to mineral leasing and to Forest Service Management.

Humboldt Meridian

Six Rivers National Forest

T. 6 N., R. 6 E.,

Sec. 19, Beginning at Corner 4B of Trace 51; then S. 0°14'00" E., 89.07 feet; then N. 69°03'53" W., 246.64 feet; then N. 32°09'30" W., 686.59 feet; then S. 25°20'30" W., 250.00 feet; then S. 40°34'19" W., 471.94 feet; then S. 0°14'00" E., 100.00 feet; then S. 89°48'00" W., 378.00 feet; then N. 56°40'00" W., 74.22 feet; then S. 53°41'43" W., 382.37 feet; then S. 62°40'07" W., 177.56 feet; then S. 49°11'02" W., 127.14 feet; then S. 17°25'56" W., 121.22 feet; then S. 72°34'04" E., 50.00 feet; then S. 17°25'56" W., 200.00 feet; then N. 72°34'04" W., 200.00 feet; then N. 17°25'56" E., 200.00 feet; then S. 72°34'04" W., 50.00 feet; then N. 17°25'56" E., 149.66 feet; then N. 49°11'02" E., 179.56 feet; then N. 62°40'07"

E., 177.56 feet; then N. 53°41'43" E., 328.63 feet; then N. 56°40'00" W., 224.72 feet; then S. 51°31'30" W., 425.00 feet; then S. 84°00'00" W., 590.00 feet; then N. 0°00'00", 170.00 feet; then N. 79°00'00" E., 690.00 feet; then N. 51°31'30" E., 510.00 feet; then N. 1°55'30" E., 123.43 feet; then N. 73°54'20" E., 183.85 feet; then N. 51°31'30" E., 129.46 feet; then along a curve to the right with a radius of 690 feet through an angle of 44°56', for a distance of 541.12 feet; then along a nontangent course N. 17°39'40" E., 142.26 feet; then S. 80°11'50" E., 41.53 feet; then S. 7°12'10" E., 175.31 feet; then from a tangent that bears S. 73°59'30" E., along a curve to the right with a radius of 666 feet through an angle of 48°28', for a distance of 563.37 feet; then S. 25°31'30" E., 105.62 feet; then along a curve to the left with a radius of 384 feet through an angle of 33°57', for a distance of 227.54 feet; then S. 59°28'30" E., 75.05 feet; then S. 0°14'00" E., 111.08 feet to the point of beginning.

The area described contains 26.71 acres in Trinity County.

**DATES:** At 10 a.m. on September 25, 1989, the lands shall be opened to location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Date: August 15, 1989.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-19815 Filed 8-22-89; 8:45 am]

BILLING CODE 4310-40-M

### INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-294]

#### Commission Decision Not To Review an Initial Determination Terminating all Respondents on the Basis of a Consent Order; Issuance of Consent Order; Termination of Investigation

In the Matter of Certain Carrier Materials Bearing Ink Compositions To Be Used in a Dry Adhesive-Free Thermal Transfer Process and Signfaces Made by Such a Process.

**AGENCY:** U.S. International Trade Commission.

#### ACTION: Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 6) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation with respect to all respondents in the investigation on the basis of a consent order, thereby terminating the investigation.

**ADDRESSES:** Copies of the consent order, the ID, and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000.

**FOR FURTHER INFORMATION CONTACT:** Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1104.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

**SUPPLEMENTARY INFORMATION:** On June 30, 1989, the presiding ALJ issued an ID granting the joint motion of complainant Minnesota Mining and Manufacturing Corp. and respondents Signtech Inc., Acme Wiley Corp., Dualite Inc., Fairmont Sign Company, Graflex Inc., Harlan Laws Corp., McHenry Industries, Persona Inc., and Superior Electrical Advertising to terminate the investigation on the basis of a consent order.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, Aug. 29, 1988).

Issued: August 16, 1989.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 89-19849 Filed 8-22-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-285]

#### Issuance of General Exclusion Order

In the matter of: Certain Chemiluminescent Compositions and Components Thereof and Methods of Using, and Products Incorporating, the Same.



**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is given that the Commission has issued a general exclusion order in the above-captioned investigation. The order prohibits the unlicensed importation from any country of certain chemiluminescent compositions, components thereof, products incorporating the same, and certain packaging and literature pertaining to such articles.

**FOR FURTHER INFORMATION CONTACT:** William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202)-252-1116. Copies of the Commission's order, the nonconfidential version of the opinion issued therewith, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 am to 5:15 pm) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202)-252-1000. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation upon the filing of a complaint on July 21, 1988, by American Cyanamid Company (Cyanamid), of Wayne, N.J. The complaint alleged violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation and sale of certain chemiluminescent compositions and components thereof by reason of infringement of three registered trademarks and various claims of seven U.S. patents. Respondents named in the notice of investigation were Societe Prolufab of Seresnes, France (Prolufab) and Mr. Luc Noel of Los Angeles, CA (53 FR 32476-77, August 25, 1988).

The notice of investigation was amended to conform to the August 1988 amendments to section 337 (53 FR 43276, October 26, 1988), and was also amended to include within the scope of the investigation products incorporating chemiluminescent compositions (54 FR 11822, March 22, 1989).

On January 6, 1989, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding respondent Prolufab to be in default. The Commission determined not to review the ID, thereby allowing it to become the determination of the

Commission (54 FR 6181, February 8, 1989). The ID provided that Prolufab had waived its right to appear in the investigation, to contest the allegations at issue, and to be served with documents. On March 14, 1989, the Commission determined not to review an ID terminating the investigation as to one of the two respondents—Luc Noel—on the basis of a consent order (54 FR 11822, March 22, 1989).

On March 22, 1989, the ALJ issued an ID granting complainant's motion for summary determination regarding violation of section 337. The ID found that respondent Prolufab had violated section 337 with regard to infringement of the following:

Claims 1-5 and 7-10 of U.S. Letters Patent 3,749,679;  
Claims 1, 2, 4, 6, and 8 of U.S. Letters Patent 3,775,336;  
Claims 1-6 of U.S. Letters Patent 3,888,786;  
Claims 1, 4, and 5 of U.S. Letters Patent 4,313,843;  
Claims 1, 2, 4, 6, and 7 of U.S. Letters Patent 3,729,426;  
Claims 1 and 3 of U.S. Letters Patent 4,076,645;  
Registered Trademark Number 925,341; and  
Registered Trademark Number 1,141,455.

The Commission decided to review only that portion of the ID relating to contributory infringement of the two registered trademarks listed above, thereby allowing the ALJ's findings with regard to all other issues in the ID, including patent infringement, to become the determination of the Commission (54 FR 19250, May 4, 1989). The Commission invited submissions from the parties, government agencies, and the public on the issues of remedy, public interest, and bonding during the period of Presidential review. The Commission received comments from complainant, from the Commission investigative attorney, and from former respondent Luc Noel. No agency comments were received. Having considered these submissions, the Commission made its determination regarding the issue under review, remedy, public interest, and bonding.

The authority for this action is conferred by section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and by Commission interim rules 210.56 and 210.58 (53 FR 33071-72, Aug. 29, 1988).

Issued: August 17, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19848 Filed 8-22-89; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 22-51]

#### Cotton Comber Waste

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of an investigation under section 22(d) of the Agricultural Adjustment Act (7 U.S.C. 624(d)) and scheduling of a hearing to be held in connection with the investigation.

**SUMMARY:** On July 25, 1989, the Commission received a letter from the President stating that the President had been advised by the Secretary of Agriculture, and that he agreed with the Secretary, "that there is reason to believe that the quota on cotton comber waste, wherever classified in the Harmonized Tariff Schedule of the United States, may need to be terminated or modified since the circumstances requiring the proclamation of such import quota restrictions have changed."

As directed by the President, the Commission has instituted an investigation under section 22(d) of the Agricultural Adjustment Act (7 U.S.C. 624(d)) to determine whether the quota on cotton comber waste, provided for in subheading 9904.30.50 of the Harmonized Tariff Schedule of the United States, should be terminated or modified, including globalizing country quota allocations, eliminating the staple length restrictions on cotton used to make cotton comber waste, or distinguishing between bleached and unbleached cotton comber waste, or whether the quota should otherwise be adjusted to take account of circumstances that have changed since the quota was proclaimed. Subheading 9904.30.50 includes two quota subcategories. Subcategory A establishes a "minimum quota" for certain cotton comber waste" and subcategory B establishes an "unreserved quota" for all quota-type cotton waste imports, including cotton comber waste, certain card strips lap waste, sliver waste, and roving waste. Because both subcategories include cotton comber waste, the Commission's investigation will examine imports entering under both subcategories.

The President asked that the Commission report its findings and recommendations at the earliest practicable date. The Commission



anticipates submitting its report to the President on January 25, 1990.

For further information concerning the conduct of this investigation, hearing procedures and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E, and part 204 (19 CFR parts 201, 204).

**EFFECTIVE DATE:** July 25, 1989.

**FOR FURTHER INFORMATION CONTACT:** Valerie Newkirk (202-252-1190), Office of investigations, U.S. International Trade Commission, Mary Elizabeth Enfield (202-252-1455), Textiles, Leather Products, and Apparel Division, Office of Industries, or Rick Rhodes (202-252-1322), Agriculture, Fisheries, and Forest Products Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

**SUPPLEMENTARY INFORMATION:**

*Participation in the investigation.*—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

*Service list.*—Pursuant to section 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR § 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

*Hearing.*—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on November 28, 1989, at the U.S. International Trade Commission

Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 13, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 16, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 20, 1989.

Testimony at the public hearing must be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs. Post hearings briefs must not exceed ten (10) pages of textual material, double spaced, on stationary measuring 8½ × 11 inches, and must be submitted not later than the close of business on December 5, 1989. In addition, the presiding official may permit persons to file answers to requests made by the Commission at the hearing within a specified time. The Secretary will not accept for filing posthearing briefs or answers which do not comply with the provisions contained in this notice.

*Written submissions.*—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 5, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business information will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

This notice is published pursuant to § 204.4 of the Commission's rules (19 CFR 204.4).

By order of the Commission.

Issued: August 18, 1989.

Kenneth R. Mason,  
Secretary.

[FR Doc. 89-19845 Filed 8-22-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-233 (Final)]

## 12-Volt Motorcycle Batteries From Taiwan

### Determination

On the basis of the record<sup>1</sup> developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Taiwan of 12-volt motorcycle batteries, provided for in subheading 8507.10.00 of the Harmonized Tariff Schedule of the United States (previously reported under items 683.01 and 683.05 of the Tariff Schedules of the United States), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

### Background

The Commission instituted this investigation effective April 18, 1989, following a preliminary determination by the Department of Commerce that imports of 12-volt motorcycle batteries from Taiwan were being sold at LTFV within the meaning of section 735 of the act (19 U.S.C. 1673d(a)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of May 4, 1989 (54 FR 19253). The hearing was held in Washington, DC, on July 6, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 16, 1989. The views of the Commission are

<sup>1</sup> The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).



contained in USITC Publication 2213 (August 1989), entitled "12-Volt Motorcycle Batteries from Taiwan: Determination of the Commission in Investigation No. 731-TA-238 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission:

Issued: August 17, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19846 Filed 8-22-89; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 320X)]

### CSX Transportation Inc.; Abandonment of Railroad Line in Brunswick County, NC

Applicant has filed a notice of exemption under 49 CFR Part 1152 subpart F—Exempt Abandonments to abandon its 1.12-mile line of railroad between mileposts AC-248.20 and -249.32 at Navassa, in Brunswick County, NC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant with the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to

file an offer of financial assistance under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking statements under 49 CFR 1152.29 must be filed by September 5, 1989.<sup>3</sup> Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by September 12, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 28, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interest Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 16, 1989.

By the Commission, Jane F. Mackall,  
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-19710 Filed 8-22-89; 8:45 am]

BILLING CODE 7035-01-M

Informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

## DEPARTMENT OF JUSTICE

### Lodging of Settlement Agreement Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 14, 1989, a consent decree in *United States v. Springs Industries, Inc.*, Civil Action D:89 1900 8, was lodged with the United States District Court for the District of South Carolina. The complaint filed by the United States, pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, as amended, sought injunctive relief to require defendant to abate an imminent and substantial endangerment to public health or welfare or the environment from the actual or threatened release of hazardous substances at the Wamchem site, located in Beaufort County, South Carolina. The complaint also sought reimbursement for EPA's past response costs. The proposed consent decree requires the defendant to perform the Remedial Design and Remedial Action in accordance with EPA's Record of Decision, signed by the Regional Administrator of EPA Region IV on June 30, 1988, and reimburse the United States for past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Springs Industries, Inc.*, D.J. Ref. No. 90-11-2-265. The proposed consent decree may be examined at the Office of the United States Attorney, The Summerall Center, 19 Hagood Avenue, 10th Floor, Charleston, South Carolina and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NW., Atlanta, Georgia. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed settlement agreement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of \$3.20 (10 cents per page

<sup>1</sup> A stay will be routinely issued by the Commission in those proceedings where an



reproduction costs), payable to the Treasurer of the United States.

Donald A. Carr,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-19840 Filed 8-22-89; 8:45 am]

BILLING CODE 4401-01-M

# **Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Volkswagen of America, Inc.**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 15, 1989, a proposed Consent Decree in *United States v. Volkswagen of America, Inc.* No. 89-1687, was lodged with the United States District Court for the Western District of Pennsylvania. The proposed Consent Decree arises from a civil action filed simultaneously pursuant to section 113(b) of the Clean Air Act ("the Act"), 42 U.S.C. 7413(b), seeking civil penalties and injunctive relief for emissions of volatile organic compounds ("VOCs") in violation of the Pennsylvania State Implementation Plan ("SIP") and the Act at Volkswagen's auto assembly and surface coating facility in New Stanton, Pennsylvania. The proposed Decree requires the company to pay a civil penalty of \$600,000 for its past violations of the Act through July 1988. Volkswagen ceased operations at the New Stanton facility in July 1988.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Volkswagen of America, Inc.*, DJ Ref No. 90-5-2-1-1238. The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW, Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting

a copy please enclose a check in the amount of \$.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-19841 Filed 8-22-89; 8:45 am]

BILLING CODE 4410-01-M

## **Antitrust Division**

### **Notice Pursuant to the National Cooperative Research Act of 1984—CAD Framework Initiative, Inc.; Correction**

In notice document 89-14802 concerning CAD Framework Initiative, Inc. appearing in the issue of Thursday, June 22, 1989 at 54 FR 26265, make the following correction: in the list of Corporate Members delete "Apollo Bell Laboratories;" add "Apollo Computer, Inc." and "AT&T Bell Laboratories." This correction replaces the correcting notice of August 4 (notice document 89-14802, 54 FR 32141).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-19836 Filed 8-22-89; 8:45 am]

BILLING CODE 4410-01-M

### **Pursuant to the National Cooperative Research Act of 1984—NAHB Research Foundation; National Cooperative Research Act of 1984; Smart House Project**

Notice is hereby given that, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the NAHB Research Foundation, Inc. ("NAHB") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on June 30, 1989 disclosing (1) the identities of two additional parties and five additional advisors to the Smart House Project,

#### **Parties**

Ducane Industries  
Pioneer Electronics (USA) Inc.

#### **Advisors**

Florida Power & Light Company  
Midwest Gas Company  
National Rural Electric Cooperative Association  
Public Service Company of Colorado  
Southern Connecticut Gas Co.;

(2) the identities of four advisors that no longer are involved in the Smart House Project,

#### **Advisors**

Boston Edison Company  
Detroit Edison Company  
Hydro Quebec  
US West; and

(3) the revision of the listing or name for one other party.

#### **Party**

Interior Piping Systems, Inc.

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of current parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stages by separate agreements at each stage. The following are current parties and have signed agreements to fund or otherwise participate in the first stage of the venture, which involves, among other things, organizational activities:

AMP, Incorporated  
Apple Computer, Inc.  
Arco Solar, Inc.  
AT&T Technologies, Inc.  
Bell Northern Research Ltd.  
Bose Corporation  
BRIntec Corporation  
Broan Mfg. Co., Inc.  
Burndy Corporation  
Canada Wire & Cable Limited  
Carrier Corporation  
Challenger Electrical Equipment Corp.  
Dicon System Ltd.  
Ducane Industries  
Dukane Corporation  
E. I. duPont de Nemours & Company (Inc.)  
Emerson Electric Co.  
Federal Pioneer, Ltd.  
Gas Research Institute  
General Electric Company  
Honeywell Corporation  
Interior Piping Systems, Inc.  
Johnson Controls  
Kohler Company  
Landis & Gyr Metering, Inc.  
Lennox Industries Inc.  
Molex Incorporated  
Multiplex Technology, Inc.  
NAHB Research Foundation, Inc.  
North American Philips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corporation  
Northern Telecom, Inc.  
Onan Corporation  
Pioneer Electronics (USA) Inc.  
Robertshaw Controls Company  
Schlage Lock Company  
SCICON Systems Control, Inc.



Scott Instruments Corporation  
 Scovill Inc.  
 Shell Chemical Company (Division of  
 Shell Oil Company)  
 Siemens Energy and Automation, Inc.,  
 Circuit Protection Division  
 Slater Electric, Inc.  
 Smart House Development Venture, Inc.  
 Smart House, L.P.  
 Sola Basic Industries, Inc.  
 Southwire Company  
 Square D Company  
 Whirlpool Corporation  
 The Wiremold Company

The following entities are serving as  
 advisors to the venture:

Aquapetroli  
 Allegheny Power Service Corporation  
 American Electric Power Service Corp.  
 American Gas Association  
 Arkla, Inc.  
 Baltimore Gas & Electric Company  
 Bell Canada  
 Bell South Services  
 Columbia Gas Distribution Companies  
 Consolidated Natural Gas Company  
 Consumers Gas Company, Ltd.  
 Consumers Power Company  
 Copper Development Association Inc.  
 Delmarva Power & Light Company  
 Duke Power Company  
 Edison Electric Institute  
 Electric Power Research Institute  
 Florida Power & Light Company  
 Gas Research Institute  
 Home Builders Institute  
 Houston Lighting & Power Company  
 Illinois Consolidated Telephone Co.  
 International Conference of Building  
 Officials  
 Kansas Gas & Electric Company  
 Lone Star Gas Company  
 Michigan Consolidated Gas Company  
 Midwest Gas Company  
 Minnesota Blue Flame Gas Asso.  
 National Association of Home Builders  
 National Cable Television Association  
 National Joint Apprenticeship &  
 Training Committee  
 National Rural Electric Cooperative  
 Association  
 Northern Illinois Gas  
 Oklahoma Gas & Electric Company  
 Oklahoma Natural Gas Company  
 Ontario Hydro  
 Pacific Gas & Electric Company  
 Pacific Power & Light Company  
 Paragon Design Resource S.W., Ltd.  
 Portland General Electric Company  
 Potomac Electric Power Company  
 Professional Builder  
 Public Service Company of Colorado  
 Southern California Edison Company  
 Southern Connecticut Gas Co.  
 Southwest Gas  
 Southwestern Bell Telephone Company  
 Union Gas, Ltd.  
 U.S. Dept. of Housing & Urban Dev.

Virginia Electric and Power Company  
 Washington Gas Light Company  
 Wisconsin Electric Power Company

The Smart House Project will engage  
 in activities the purpose of which will be  
 to develop a coordinated home control  
 and energy distribution system  
 containing integral telecommunications  
 and advanced safety features. The  
 project is intended to design and  
 develop a set of compatible products,  
 including integrated power and signal  
 cabling to tie home electrical products  
 into a single power and communications  
 network; communications-capable  
 appliances, heating and cooling  
 equipment, utility meters and home  
 electrical and electronic products;  
 electric power conditioning and  
 conversion equipment; controllers and  
 software to make logical decisions, issue  
 control instructions, and regulate the  
 distribution of energy, information and  
 instructions throughout the network;  
 monitoring and control devices to detect  
 and neutralize malfunctions in energy  
 distribution within the home; telephone  
 and CATV interfaces to allow  
 information to be passed to and from the  
 home over telephone and CATV lines;  
 and input and output devices with  
 which users can control and receive  
 information from the network and the  
 devices attached to it.

On June 14, 1985 NAHB filed its  
 original notification pursuant to section  
 6(a) of the Act. On September 13, 1985,  
 January 9, 1986, April 28, 1986, July 30,  
 1986, December 16, 1986, April 8, 1987,  
 June 30, 1987, August 25, 1987, December  
 4, 1987, February 22, 1988, April 5, 1988,  
 and October 27, 1988, NAHB filed  
 additional written notifications. The  
 Department of Justice published notices  
 in the **Federal Register** in response to  
 these additional notifications on  
 October 10, 1985 (50 FR 41428), on  
 January 28, 1986 (51 FR 3520), on May 16,  
 1986 (51 FR 18049), on August 28, 1986  
 (51 FR 30724), on January 15, 1987 (52 FR  
 1673), on May 8, 1987 (52 FR 17490), on  
 July 30, 1987 (52 FR 28494), on September  
 22, 1987 (52 FR 35596), on January 5, 1988  
 (53 FR 186), on March 21, 1988 (53 FR  
 9154), on May 3, 1988 (53 FR 15750) and  
 on December 8, 1988 (53 FR 49614),  
 respectively.

The principal business address of the  
 Smart House Project is 400 Prince  
 Georges Center Boulevard, Upper  
 Marlboro, Maryland 20772-8731

Joseph H. Widmar,

Director of Operations, Antitrust Division  
 [FR Doc. 89-19837 Filed 8-22-89 8:45 am]

BILLING CODE 4410-01-M

# **Notice Pursuant to the National Cooperative Research Act of 1984— Portland Cement Association**

Notice is hereby given that, pursuant  
 to section 6(a) of the National  
 Cooperative Research Act of 1984, 15  
 U.S.C. 4301 et seq. ("the Act"), the  
 Portland Cement Association ("PCA")  
 has filed written notifications  
 simultaneously with the Attorney  
 General and the Federal Trade  
 Commission on July 20, 1989, disclosing  
 that there has been a change in the  
 membership of PCA. Specifically,  
 Hercules Cement Company, RC Cement  
 Co., Inc., River Cement Company, and  
 Signal Mountain Cement Company  
 joined PCA effective July 1, 1989, and  
 should therefore be listed as members.  
 In addition, Santee Portland Cement  
 Corp. should be listed as a separate  
 member. The notification was filed for  
 the purpose of invoking the Act's  
 provisions limiting the recovery of  
 antitrust plaintiffs to actual damages  
 under specified circumstances.

Accordingly, at present the members  
 of the PCA are those companies listed  
 below:

## **United States**

Aetna Cement Corporation  
 Alamo Cement Company  
 Alaska Basic Industries  
 Ash Grove Cement Company  
 Ash Grove Cement West, Inc.  
 Blue Circle Atlantic, Inc.  
 Blue Circle, Inc.  
 Blue Circle West Inc.  
 Calaveras Cement Company  
 CalMat Co.  
 Capitol Aggregates, Inc.  
 Continental Cement Company Inc.  
 Coplay Cement Company  
 Davenport Cement Company  
 Dragon Products Company  
 Dundee Cement Company  
 Glens Falls Cement Company, Inc.  
 Hawaiian Cement  
 Hercules Cement Company  
 Ideal Basic Industries, Inc.  
 Independent Cement Corporation  
 Lafarge Corporation  
 Lehigh Portland Cement Company  
 LoneStar-Falcon  
 Lone Star Industries, Inc.  
 Lone Star Northwest  
 Medusa Cement Corporation  
 Missouri Portland Cement Company  
 The Monarch Cement Company  
 National Cement Company, Inc.  
 National Cement Company of California, Inc.  
 Northwestern States Portland Cement Co.  
 Phoenix Cement Company  
 RC Cement Co., Inc.  
 Rinker Materials Corporation  
 River Cement Company  
 RMC Lonestar  
 Rochester Portland Cement Corporation  
 St. Marys Peerless Cement Company  
 St. Marys Wisconsin Inc.



Santee Portland Cement Corp.  
Signal Mountain Cement Company  
The South Dakota Cement Plant  
Southwestern Portland Cement Company  
Tarmac-LoneStar, Inc.  
Tilbury Cement Company

#### Canada

Federal White Cement Ltd.  
Ideal Cement Company Ltd.  
Inland Cement Limited  
Lafarge Canada Inc.  
Lake Ontario Cement Limited  
North Star Cement Limited  
St. Lawrence Cement Inc.  
St. Marys Cement Corporation  
Tilbury Cement Limited

#### Mexico

Instituto Mexicano del Cemento y del  
Concreto (IMCYC)  
Cementos Acapulco, S.A.  
Cementos Apasco, S.A.  
Cementos de Chihuahua, S.A.  
Cementos Mexicanos, S.A.  
Cementos Moctezuma, S.A.  
Cooperativa de Cementos Cruz Azul  
Cooperativa de Cementos Hidalgo

#### Affiliate Members

Cement and Concrete Promotion Council of  
Texas  
Florida Concrete and Products Association  
Mississippi Concrete Industries Association  
North Central Cement Promotion Association  
Northern California Cement Promotion Group  
Northwest Concrete Promotion Group  
Rocky Mountain Cement Promotion Council  
South Central Cement Promotion Association  
Southern California Cement Group

In addition, the following equipment  
suppliers are involved as "Participating  
Associates," together with PCA  
members, in the activities of the  
Manufacturing Process Subcommittee of  
PCA's General Technical Committee:

Baker-Dolomite (DBCA)  
C-E Raymond  
Claudius Peters, Inc.  
F.L. Smith and Company  
Holderbank Consulting Ltd.  
Humboldt Wedag Company  
Magotteaux-Slegten Companies  
Polysius Corp.  
The Fuller Company  
W.R. Grace & Company

On January 7, 1985, PCA filed its  
original notification pursuant to section  
6(a) of the Act. The Department of  
Justice (the "Department") published a  
notice in the *Federal Register* pursuant  
to section 6(b) of the Act on February 5,  
1985, 509 FR 5015. On March 14, 1985,  
August 13, 1985, January 3, 1986,  
February 14, 1986, May 30, 1986, July 10,  
1986, December 31, 1986, February 3,  
1987, April 17, 1987, June 3, 1987, July 29,  
1987, August 6, 1987, October 9, 1987,  
February 18, 1988, March 9, 1988, March  
11, 1988, July 7, 1988, August 9, 1988,  
August 23, 1988, January 23, 1989,  
February 24, 1989, March 13, 1989, and  
May 25, 1989, PCA filed additional

written notifications. The Department  
published notices in the *Federal Register*  
in response to these additional  
notifications on April 10, 1985 (50 FR  
14175), September 16, 1985 (50 FR 37594),  
February 4, 1986 (51 FR 4440), March 12,  
1986 (51 FR 8573), June 27, 1986 (51 FR  
23479), August 14, 1986 (51 FR 29173),  
February 3, 1987 (52 FR 3356), March 4,  
1987 (52 FR 6635), May 14, 1987 (52 FR  
18295), July 10, 1987 (52 FR 28183),  
August 26, 1987 (52 FR 32185), November  
17, 1987 (52 FR 43953), March 28, 1988 (53  
FR 9999), August 4, 1988 (53 FR 29397),  
September 15, 1988 (53 FR 35935),  
September 28, 1988 (53 FR 37883),  
February 23, 1989 (54 FR 7894), March  
20, 1989 (54 FR 11455), April 25, 1989 (54  
FR 17835), and June 28, 1989 (54 FR  
27220), respectively.

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

[FR Doc. 89-19903 Filed 8-22-89; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 89-70;  
Exemption Application No. D-7794 et al.]

### Grant of Individual Exemptions; Bear Lumber Co., Inc./Bear Brothers, Inc., et al.

**AGENCY:** Pension and Welfare Benefits  
Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains  
exemptions issued by the Department of  
Labor (the Department) from certain of  
the prohibited transaction restrictions of  
the Employee Retirement Income  
Security Act of 1974 (the Act) and/or the  
Internal Revenue Code of 1954 (the  
Code).

Notices were published in the *Federal  
Register* of the pendency before the  
Department of proposals to grant such  
exemptions. The notices set forth a  
summary of facts and representations  
contained in each application for  
exemption and referred interested  
persons to the respective applications  
for a complete statement of the facts  
and representations. The applications  
have been available for public  
inspection at the Department in  
Washington, DC. The notices also  
invited interested persons to submit  
comments on the requested exemptions  
to the Department. In addition the  
notices stated that any interested person  
might submit a written request that a  
public hearing be held (where

appropriate). The applicants have  
represented that they have complied  
with the requirements of the notification  
to interested persons. No public  
comments and no requests for a hearing,  
unless otherwise stated, were received  
by the Department.

The notices of pendency were issued  
and the exemptions are being granted  
solely by the Department because,  
effective December 31, 1978, section 102  
of Reorganization Plan No. 4 of 1978 (43  
FR 47713, October 17, 1978) transferred  
the authority of the Secretary of the  
Treasury to issue exemptions of the type  
proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of  
the Act and/or section 4975(c)(2) of the  
Code and the procedures set forth in  
ERISA Procedure 75-1 (40 FR 18471,  
April 28, 1975), and based upon the  
entire record, the Department makes the  
following findings:

(a) The exemptions are  
administratively feasible;

(b) They are in the interests of the  
plans and their participants and  
beneficiaries; and

(c) They are protective of the rights of  
the participants and beneficiaries of the  
plans.

**Bear Lumber Company, Inc./Bear  
Brothers, Inc., Second Amended and  
Restated Profit Sharing Plan (the Plan)**  
Located in Montgomery, Alabama

[Prohibited Transaction Exemption 89-70;  
Exemption Application No. D-7794]

### Exemption

The restrictions of section 406(a),  
406(b)(1) and (b)(2) of the Act and the  
sanctions resulting from the application  
of section 4975 of the Code, by reason of  
section 4975(c)(1)(A) through (E) of the  
Code, shall not apply to the sale for cash  
by the Plan of certain real property (the  
Real Property) to Bear Lumber  
Company, Inc., the Plan sponsor, for  
\$415,000, provided that the price is no  
less than the fair market value of the  
Real Property on the date of sale.

For a more complete statement of the  
facts and representations supporting the  
Department's decision to grant this  
exemption refer to the notice of  
proposed exemption published on June  
22, 1989 at 54 FR 26269.

### FOR FURTHER INFORMATION CONTACT:

Joseph L. Roberts III of the Department,  
telephone (202) 523-8881. (This is not a  
toll-free number.)



**Frank W. Hilliard, D.D.S., M.S.D., Inc. Profit Sharing Plan and Trust (the Plan) located in Arlington, TX**

[Prohibited Transaction Exemption 89-71; Exemption Application No. D-7821]

**Exemption**

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective June 30, 1984, to the past and proposed lease by the individual account of Frank W. Hilliard, D.D.S., M.S.D. in the Plan of certain real property located in Arlington, Texas To Frank W. Hilliard, D.D.S., M.S.D., Inc., the sponsor of the Plan; provided that all terms of such transactions are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 22, 1989 at 54 FR 26270.

**EFFECTIVE DATE:** This exemption is effective as of June 30, 1984.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**J. Lee Milligan, Inc. Profit Sharing Plan and Trust (the Plan) Located in Amarillo, Texas**

[Prohibited Transaction Exemption 89-72; Exemption Application No. D-7838]

**Exemption**

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of certain real property (the Real Property) to J. Lee Milligan, Inc., the Plan sponsor, provided that the price paid for the Real Property be no less than the greater of the fair market value of the Real Property as of the date of sale, as determined by an independent and qualified appraiser, or the total outlay by the Plan in connection with its acquisition and retention of the Real Property to the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 22, 1989 at 54 FR 26271.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Roberts III of the Department,

telephone (202) 523-8881. (This is not a toll-free number.)

**Eubanks & Eubanks, D.O., P.C. Pension and Profit Sharing Trust Fund (the Plan) Located in Troutdale, Oregon**

[Prohibited Transaction Exemption 89-73; Exemption Application No. D-7897]

**Exemption**

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a proposed cash sale by the separate accounts of Robert L. Eubanks and Theresa M. Eubanks (the Eubanks) in the Plan of certain land to the Eubanks, parties in interest with respect to the Plan, provided that the Plan receives the greater of \$37,100 or the fair market value at the time of the sale.

**Written Comments**

The applicant submitted a written comment in which it informed the Department that it wished to correct certain information published in the notice of proposed exemption.

Accordingly, as corrected:

(a) As of December 31, 1988 the Plan had 16 participants.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 24, 1989 at 54 FR 22502.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan of the Department at (202) 523-8194. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 406(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the

employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of August, 1989.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 89-19862 Filed 8-22-89; 8:45 am]

**BILLING CODE 4510-29-M**

[Application No. D-7684-7685 et al.]

**Proposed Exemptions; Ophthalmic Associates, P.A. Employees' Pension Plan, et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the International Revenue Code of 1954 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5671, U.S.



Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

#### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the *Federal Register*. Such notice shall include a copy of the notice of pendency of the exemption as published in the *Federal Register* and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Ophthalmic Associates, P.A. Employees' Pension Plan (the Pension Plan) and Ophthalmic Associates, P.A. Employees' Money Purchase Pension Plan (the Money Purchase Pension Plan; collectively, the Plans) Located in Lansdale, PA**

[Application Nos. D-7684 and D-7685, Respectively]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section

408(b)(2) of the Act shall not apply to the transfer by the Pension Plan to the Money Purchase Pension Plan of a 50 percent tenant-in-common interest in certain improved real property (the Property) and cash, provided the terms of the transaction are at least as favorable to the Money Purchase Pension Plan as those obtainable in an arm's-length transaction with an unrelated party. In addition, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the assumption, by the Money Purchase Pension Plan, of certain pre-existing loan, lease and sublease obligations of the Pension Plan with persons who are parties in interest with respect to both Plans, provided the terms of the transaction are at least as favorable to the Money Purchase Pension Plan as those obtainable in an arm's length transaction with an unrelated party.

#### Summary of Facts and Representations

1. Ophthalmic Associates, P.A. (Ophthalmic) is a professional association organized under the laws of the Commonwealth of Pennsylvania. Physicians affiliated with Ophthalmic are engaged in the medical practice of ophthalmology in a two story office building located at 1000 N. Broad Street, Lansdale, Pennsylvania. Other occupants of the Property are Pearlstine, Salkin, Hardison and Robinson (Pearlstine-Salkin), a professional corporation of attorneys and CBS Optical (CBS Optical), an entity which is in the business of fitting and selling eyeglasses. Pearlstine-Salkin is legal counsel to Ophthalmic and provides legal services to employee benefit plans sponsored by Ophthalmic. As such, Pearlstine-Salkin is a party in interest with respect to the Ophthalmic Plans. CBS Optical is also a party in interest since it is exclusively owned by the trustees (the Trustees) of the Plans.

2. Ophthalmic sponsors the Pension Plan and the Money Purchase Pension Plan. The Pension Plan is a defined benefit plan with 21 participants and total assets of approximately \$2,994,839 as of July 31, 1988. The Money Purchase Pension Plan is a defined contribution plan having 22 participants and total assets of approximately \$1,566,315 as of July 31, 1988. The Plans share common participants but neither Plan is a party in interest with respect to the other. The Plans also share common trustees who are responsible for making investment decisions affecting the Plans. The Trustees of the Plans are Messrs. Paul L.

Carmichael, Robert W. Connor, Louis W. Schwartz and Jonathan D. Belmont.

3. On June 25, 1982, the Department granted Prohibited Transaction Exemption (PTE) 82-103 at 47 FR 27645. PTE 82-103 permitted the Ophthalmic Pension Plan and the Pearlstine-Salkin Associates Employees Pension Plan (the Pearlstine Pension Plan)<sup>1</sup> to purchase 50 percent interests in the Property, as tenants in common, from Ophthalmic Investors Associates (Ophthalmic Investors), a partnership comprised of certain principals of Ophthalmic and Pearlstine-Salkin. The sales price for the Property was \$900,000. This amount reflected the independently appraised value of the subject realty as of September 26, 1980. On July 1, 1982, the Ophthalmic Pension Plan and the Pearlstine Pension Plan each paid \$100,000 in cash to Ophthalmic Investors as the initial downpayment on the Property. Both plans took the Property subject to an existing first mortgage in the original principal amount of \$550,000 and an additional loan of \$75,000 (the First Mortgage and Addendum) between Ophthalmic Investors and an unrelated party. The First Mortgage and the Addendum carried annual interest rates of 6 1/4 percent and 9 1/2 percent, respectively. Such loans, which were secured by the Property, had a combined outstanding balance of \$401,074 as of July 1, 1982. Although the Ophthalmic and Pearlstine Pension Plans were not required to assume the obligations of Ophthalmic Investors pursuant to the First Mortgage and the Addendum, they were required to make payments to satisfy the terms of the loan instruments. Both plans also entered into a second mortgage (the Second Mortgage) in the original principal amount of \$298,926 with Ophthalmic Investors for the balance of the sales price which was to be repaid over a ten year period commencing July 1, 1982 and ending June 30, 1992 at an annual interest rate of 10 1/2 percent. The Second Mortgage was also secured by the Property.

The applicants represent that the sale of the property by Ophthalmic Investors to the Ophthalmic Pension Plan and the Pearlstine Pension Plan was carried out in the manner and on the terms described in PTE 82-103. The applicants also represent that payments under the First Mortgage, Addendum and Second Mortgage have been timely made. As of July 31, 1988, the applicants state that

<sup>1</sup> The applicants represent that none of the plans described herein is a party in interest with respect to the other within the meaning of section 3(14) of the Act.



the principal balances outstanding under the First Mortgage, the Addendum and the Second Mortgage were \$76,326, \$6,654 and \$157,539, respectively, or \$240,520 in the aggregate.

4. PTE 82-103 also permitted the leasing of the property (the Lease) by the plans to Pearlstine-Salkin Ophthalmic Associated Investors (PSO), a party in interest. The Lease is a triple-net lease providing for an initial term of ten years commencing July 1, 1982 and ending June 30, 1992. The Lease requires that rentals be based on the fair market rental value of the Property, as determined by an independent appraiser. It also stipulates that the Property be reappraised every three years in order that rental payments can be adjusted to reflect the fair market rental value of the Property. The Lease further states that adjusted rentals may not be less than the rentals received during the preceding Lease term.

In the event of a default, the plans may sell the Property to Ophthalmic Investors at the greater of its fair market value or the \$900,000 original sales price. At the occurrence of the repurchase, the plans will be relieved of their outstanding mortgage obligations. The balance owed by the plans will then be credited against the purchase price.

The Lease is intended to amortize the Ophthalmic and Pearlstine Pension Plans' obligations under the First Mortgage, the Addendum and the Second Mortgage through the rental payments received such that the plans will own the Property free of any encumbrance at the termination of these obligations. PSO, in turn, subleases the Property (the Subleases) to Pearlstine-Salkin, Ophthalmic, and since July 1, 1984, to CBS Optical. The economic effect of the Sublease involving CBS Optical is such that Pearlstine-Salkin and Ophthalmic receive a credit for amounts actually paid by CBS Optical under their respective Subleases with PSO. If rentals are not paid by CBS Optical, Pearlstine-Salkin and Ophthalmic remain fully liable to PSO which, in turn, remains fully liable to the Ophthalmic and the Pearlstine Plans.

According to the applicants, all rental payments due under the Lease and Subleases have been timely paid and rental adjustments have been in compliance with Lease/Sublease terms. The applicants also represent that the rental payments received by PSO under its Subleases have not been greater than the rental payments PSO has paid the Ophthalmic and Pearlstine Plans under the Lease.

The transactions subject to PTE 82-103 are being monitored by the National Bank of Boyerton (the Bank) located in

Boyerton, Pennsylvania. The Bank presently serves as the independent fiduciary on behalf of the Ophthalmic Pension Plan and the Pearlstine-Salkin Associates Profit Sharing and Salary Savings Plan and Trust (the Pearlstine 401(k) Plan) which replaced the Pearlstine Pension Plan in 1985.<sup>2</sup>

5. On October 12, 1987, the Board of Governors of Ophthalmic decided to terminate the Pension Plan effective October 31, 1987 because of benefit restrictions imposed by the Tax Reform Act of 1986. To effectuate the termination, the Trustees intend to discharge the obligations of the Pension Plan by giving Pension Plan participants the opportunity of: (a) Having their benefits paid through annuity contracts of one or more life insurance companies; (b) having their benefits distributed in a single sum settlement; or (c) electing to have their benefits transferred to the Money Purchase Pension Plan. Each participant deciding to have his or her benefits transferred to the Money Purchase Pension Plan will have a rollover account established in the name of such participant.<sup>3</sup>

6. The Trustees have obtained the nonbinding election to have the benefits of four Pension Plan participants transferred to the Money Purchase Pension Plan. The present value of the accrued benefits for these participants is \$1,083,144. Accordingly, the Trustees request an administrative exemption to transfer, to the Money Purchase Pension

<sup>2</sup> The current application for Ophthalmic states that the Pearlstine Pension Plan was terminated and replaced with the Pearlstine 401(k) Plan in 1985. In a separate exemption application (D-6178 and D-6179), Pearlstine-Salkin sought relief similar to what is being requested in this notice of proposed exemption. That earlier exemption application was withdrawn by Pearlstine-Salkin in September 1985. No exemptive relief is being proposed herein for the transaction involving the Pearlstine 401(k) Plan and the Pearlstine Pension Plan.

<sup>3</sup> The applicants state that the termination of the Pension Plan will result in a reversion of assets to Ophthalmic. The applicants also assert that such asset reversion will comply with the "Implementation Guidelines on Asset Reversions" (the Guidelines) that were issued jointly by the Department, the Department of the Treasury and the Pension Benefit Guaranty Corporation in a news release dated May 23, 1984. In accordance with current law, when an employer terminates a defined benefit pension plan, it may not recover any surplus assets until it has fully vested all participants' benefits and has purchased and distributed annuity contracts to protect participants against the risk that their accrued benefits may be jeopardized by future market fluctuations. The applicants assert that the Pension Plan participants have become 100 percent vested and that annuity contracts will be purchased and distributed to participants electing not to transfer their benefits to the Money Purchase Pension Plan or to take a lump sum cash distribution. Further, the applicants state that the Pension Plan's actuary has confirmed that the amount of assets reverting to Ophthalmic complies with the Guidelines.

Plan, certain assets of the Pension Plan equal to the value of the transferred benefits. Among the assets of the Pension Plan that are proposed for the direct transfer are the Pension Plan's 50 percent interest in the Property plus cash. The transfer will be a unilateral transaction wherein the Pension Plan will not receive any cash consideration from the Money Purchase Pension Plan. In addition, the Money Purchase Pension Plan will not be required to pay any real estate fees or commissions in connection therewith. Following the transfer, all participants in the Money Purchase Pension Plan will share in the appreciation, depreciation, income and loss attributable to the Property.

7. The Trustees also request an administrative exemption to permit the Money Purchase Pension Plan to assume the obligations of the Pension Plan under the First Mortgage, the Addendum and the Second Mortgage and the Pension Plan's obligations under the Lease and Subleases as set forth in PTE 82-103 and as described above. In other words, exemptive relief is requested to permit the Money Purchase Pension Plan to "stand in the shoes" of the Pension Plan. All other conditions and guarantees that are set forth in PTE 82-103 will remain in full force and effect. In this regard, the Trustees of the Ophthalmic Plans have obtained a novation from Pearlstine-Salkin, the trustees of the Pearlstine 401(k) Plan and the Bank consenting to the transfer and the assumption of the pre-existing transactions by the Money Purchase Pension Plan.

8. The Property was appraised by Mr. Ken L. Steigelman (Mr. Steigelman), C.C.I.M., S.I.O.R., S.R.S., an independent appraiser affiliated with Steigelman and Associates, Inc. Realtors of Line Lexington, Pennsylvania. In an appraisal report dated October 23, 1984, Mr. Steigelman valued the Property at \$1,006,000 as of October 12, 1984. In an updated appraisal report dated February 11, 1988, Mr. Steigelman placed the fair market value of the Property at \$1,177,000 as of February 9, 1988.

9. The value of the interest that will be transferred to the Money Purchase Pension Plan will reflect 50 percent of the fair market value of the Property less the Pension Plan's proportionate shares of the First Mortgage, the Addendum and the Second Mortgage. The remainder of the consideration will be transferred by the Pension Plan in cash. Thus, the total transferred benefit will equal \$1,083,144.

10. The Bank will continue serving as the independent fiduciary for the Plans with respect to the proposed transfer of



the Property as well as for those transactions approved by the Department in PTE 82-103. The Bank represents that it has over 100 years of fiduciary responsibility experience and that its staff administers over \$117 million of trust assets. In particular, the Bank states that it is responsible in various capacities for approximately \$15.5 million of employee benefit plan-related assets. The Bank also asserts that it understands and acknowledges its duties, responsibilities and liabilities in acting as a fiduciary under the Act.

The Bank states that it maintains a commercial relationship, in the form of a checking account with Pearlstine-Salkin but no such relationship exists between it and Ophthalmic. The Bank explains that the checking account represents 0.05 percent of its total deposits. The Bank further states that it does not share common officers or directors with either Pearlstine-Salkin or Ophthalmic.

The Bank believes that the transactions compare favorably to the terms of similar transactions that might take place between unrelated parties based upon its review of Mr. Steigelman's appraisal of the Property, the fact that rentals for the Property are at fair market value and will amortize all of the indebtedness and other expenses incurred by the Plans, the guaranteed repurchase of the Property by the original principals, the favorable location of the Property and its past history of investment appreciation. The Bank also believes the transactions are in the best interests of the Money Purchase Pension Plan and its participants and beneficiaries because, consistent with what has transpired to date, such transactions would be easy to monitor and should not create any administrative difficulties. In arriving at its opinion, the Bank asserts that it has examined the investment portfolio for the Money Purchase Pension Plan, considered the Plan's liquidity requirements and examined the diversification of the assets of the Money Purchase Pension Plan in light of the transactions. The Bank further represents that it believes the transactions comply with the investment objectives and policies of the Money Purchase Pension Plan. In undertaking its responsibilities as the independent fiduciary, the Bank represents that it has approved and will monitor rentals under the Lease and Subleases to ensure that no defaults have occurred and to protect the rights of the Money Purchase Pension Plan and its participants and beneficiaries.

11. In summary, the applicants represent that the proposed transactions

will satisfy the criteria for an exemption under section 408(a) of the Act because: (a) The transfer is confined primarily to a single transaction in which a 50 percent tenant-in-common interest is being transferred by the Pension Plan to the Money Purchase Pension Plan; (b) the transfer will be a unilateral transaction wherein the Pension Plan will not receive any consideration from the Money Purchase Pension Plan; (c) the acquisition of the 50 percent interest in the Property by the Money Purchase Pension Plan will provide such plan with leasehold income and the benefits of investment appreciation; (d) the Money Purchase Pension Plan will not pay any real estate fees or commissions in connection with the transactions; and (e) as the independent fiduciary, the Bank approves of the transactions and it believes they are in the best interest of the Money Purchase Pension Plan and its participants and beneficiaries.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Margaret L. Lial, Inc. Defined Benefit Pension Plan (the Plan) Located in Sacramento, California**

[Application No. D-7954]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of certain real property (the Property) from the Plan to Edwin C. Lial and Margaret L. Lial (the Lial's), disqualified persons with respect to the Plan, provided the Plan receives the greater of \$220,000 or fair market value for the Property at the time of sale.<sup>4</sup>

*Summary of Facts and Representations*

1. Margaret L. Lial, Inc. (the Employer) is a corporation engaged in the business of writing a series of mathematics textbooks. Edwin C. Lial and his wife, Margaret L. Lial, are the sole owners of the Employer. The Lial's are also the trustees of the Plan and are the only

<sup>4</sup> Because the Lial's are the sole shareholders of the Employer and the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

participants in the Plan. The Plan is a defined benefit plan which had total assets of approximately \$1,614,704 in March of 1988.

2. The Property consists of approximately 1.6 acres of vacant land located in Sacramento, California. The Property is a specific portion (Lot 5) of a larger parcel of land owned by the Plan. The Plan acquired the larger parcel in September 1982 from an unrelated seller for a total purchase price of \$100,000. The Plan gave the seller a promissory note, secured by a deed of trust on the larger parcel, in the amount of \$62,500 and paid the remainder of the purchase price in cash. Payment of the note was completed in January 1986 and the larger parcel is currently not subject to any indebtedness. The portion of the \$100,000 purchase price attributable to the Property is \$32,852. The remainder of the larger parcel also is vacant land and will be retained by the Plan. The total cost to the Plan of acquiring and holding the Property since the time of purchase has been \$106,415, including interest payments on the \$62,500 promissory note (allocable to the Property), property taxes and allocable development costs relating to streets, water lines and other improvements.

3. The Plan obtained an appraisal on the Property from Brian P. Roche (Roche) of the American Pacific Appraisal Company of Sacramento. The applicant represents that Roche is independent of the Employer and of the Plan. Roche describes the Property as vacant industrial land (in the Del Paso Heights area of Sacramento) and believes that the highest and best use of the Property would be light industrial development, with some degree of office space. Utilizing the market data approach to value, Roche estimated the fair market value of the Property to be approximately \$220,000 as of December 16, 1988. In determining this amount, Roche made an adjustment for a required 25-foot setback and related developer's cost.

4. Since the assets of the Plan are currently invested completely in real estate, a sale of a portion of such real property will provide the Plan with greater liquidity. Also, the Property has produced no income for the Plan. The applicant represents that the Plan has attempted unsuccessfully to sell all or a portion of the real estate held by the Plan at the market value of the land. Accordingly, the Plan now proposes to sell the Property to the Lial's. The Lial's will pay no less than fair market value for the Property at the time of sale, based on an updated independent appraisal. The taxes on the Property will



be prorated as of the time of sale. The transaction will be entirely for cash, and the Plan will pay no fees or commissions in regard to the sale.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (1) The Lial's will pay no less than fair market value for the Property at the time of sale; (2) the fair market value will be established by an independent appraisal of the Property; (3) the transaction will be entirely for cash; and (4) the sale of the Property will enhance the diversification and liquidity of the assets of the Plan.

**Notice to Interested Persons:** Because the Lial's are the applicants and the only participants in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

**FOR FURTHER INFORMATION CONTACT:** Paul Kelly of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

**Clark, Partington, Hart & Hart Employee Profit Sharing Plan and Trust (the Plan) Located in Pensacola, Florida**

[Application No. D-8003]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed loan (the Loan) of \$60,000 by the Plan to Clark, Partington, Hart & Hart, P.A. (the Employer), a party in interest with respect to the Plan; and (2) the joint and several guarantees (the Guarantees) of the proposed Loan by eight principals of the Employer, each a party in interest with respect to the Plan, provided that the terms and conditions of the Loan and the Guarantees are not less favorable to the Plan than those obtainable in an arm's-length transaction with unrelated parties.

#### *Summary of Facts and Representations*

1. The Plan is a profit sharing plan with 35 participants. As of January 31, 1989, the Plan had net assets of

approximately \$1,830,000. Messrs. William H. Clark, Donald H. Partington, Robert D. Hart, Jr., and Harry B. Stackhouse serve as the trustees (the Trustees) of the Plan, and are also officers, directors, shareholders, and employees of the Employer. The Trustees constitute the investment and administrative committee for the Plan which is responsible for making decisions regarding Plan investments. The Employer is a Florida professional association engaged in the practice of law.

2. The amount of the proposed Loan represents approximately 3.28 percent of the assets of the Plan. The proceeds of the Loan will be used by the Employer to purchase office equipment, furniture, and fixtures for its existing offices. The Loan will be made at no expense to the Plan and will be represented by a promissory note having a 15 year term and payable in 180 monthly installments of principal and interest with interest adjusted annually on the unpaid balance at 1.5 percent above the prime rate charged by the Citizens and Peoples National Bank of Pensacola, Florida, on the date of execution of the Loan and on each anniversary date thereafter. The Loan will be secured by a perfected first security interest agreement in which the Employer conveys to the Plan a first security interest in specified office equipment, furniture, and fixtures that are unencumbered and owned by the Employer (the Collateral). All Collateral will be insured against fire and other hazards with the Plan named as beneficiary of insurance policies purchased by the Employer. The Collateral was appraised by Mr. Joel D. Gonia, Senior Personal Property Staff Appraiser of Allied Appraisal Associates, Inc., Gulf Breeze, Florida. Mr. Gonia affirms his lack of interest in the Collateral and his independence of the parties involved in the proposed transactions. His appraisal, rendered in accordance with standards established by the American Society of Appraisers, determined on June 4, 1989, that the fair liquidation value of the Collateral is \$121,375 (in excess of 200 percent of the Loan), an amount which would be realized from a public auction conducted under duress.

3. The Loan will be jointly and severally guaranteed by Messrs. William H. Clark, Donald H. Partington, Robert D. Hart, Jr., W. Christopher Hart, Dennis K. Larry, William E. Bond, Jr., Harry B. Stackhouse, and Robert L. Stone (collectively, the Guarantors), all of whom are principals of the Employer. Each of the Guarantors has a net worth and annual income substantially in

excess of the amount of the proposed Loan.

4. The Citizens and Peoples National Bank (the Bank), located in Pensacola, Florida, has been appointed to serve as independent fiduciary for the Plan with respect to the Loan. There is a *de minimis* banking relationship between the Employer and the Bank, consisting of deposits and loans. Deposits by the Employer are less than .0002 percent of the total deposits with the Bank and loans to the employer are less than .007 percent of the total loan portfolio of the Bank. None of the proceeds from the proposed Loan will be used by the Employer to pay off any indebtedness it owes the Bank. On July 3, 1989, the Employer paid in full the prior loan for \$40,000 that it had obtained from the Plan under Prohibited Transaction Exemption 84-157, published October 12, 1984 at 49 FR 40116.

The Bank has examined the terms and conditions of the Loan, including the personal Guarantees, the security agreement with the appraisal of the Collateral, and the latest financial statement of the Plan to determine that the Loan is in the best interests of the Plan and its participants and beneficiaries. The Bank considered the entire investment portfolio of the Plan, including the diversification of its investments, when making its determination as to the worthiness to the Plan of the proposed Loan. The Bank also represents that it would make an identical loan to the Employer at a lesser rate of interest.

5. The Bank, as independent fiduciary, has the irrevocable power and authority to monitor and enforce all the terms and conditions of the Loan. This includes making demand for timely payments, requiring appropriate annual adjustments of the interest rate, accelerating demand for payment in full of unpaid principal and accrued interest due upon default, and commencing litigation or other appropriate action against the Employer or Guarantors upon default by the Employer. Also, the Bank has the power and authority to require the Employer to pledge additional Collateral to ensure that at all times the Collateral remains at or exceeds 200 percent of the balance owing on the Loan and to require the Employer to maintain fire and hazard insurance on the Collateral with the Plan as named beneficiary of the insurance policies.

6. In summary, the applicant represents that the proposed Loan and Guarantees will satisfy the statutory criteria of section 408(a) of the Act because (a) the Loan will be secured by



a perfected first security agreement in insured collateral which will at all times during the term of the Loan have a liquidation value of not less than 200 percent of the outstanding balance of the Loan; (b) the Bank, a qualified and independent person, will serve as the fiduciary of the Plan with regard to the Loan and the Guarantees, and in that capacity has determined that the Loan is in the best interests of the Plan and its participants and beneficiaries; (c) the Bank will monitor the Loan for its entire term and will enforce performance of the obligations of the Employer and Guarantors under the applicable documents; and (d) the Loan will be made at no expense to the Plan and will be jointly and severally guaranteed by eight principals of the Employer.

#### FOR FURTHER INFORMATION CONTACT:

Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or

statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of August, 1989.

Ivan Strasfeld,

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
U.S. Department of Labor.*

[FR Doc. 89-19861 Filed 8-22-89; 8:45 am]

BILLING CODE 4510-29-M

### LEGAL SERVICES CORPORATION

#### Grant Award to D.C. Students in Court for the Expansion and Development of a Law School Civil Clinical Program

**AGENCY:** Legal Services Corporation.

**ACTION:** Announcement of a grant award.

**SUMMARY:** The Legal Services Corporation (LSC) hereby announces its intention to award a grant to D.C. Students in Court through the 1989-90 Law School Civil Clinical Program. The purpose of this grant is to assist LSC-eligible clients with their civil legal cases. Pursuant to the Corporation's announcement of funding availability in Volume 54, No. 90, pages 20454 and 20455 of the Federal Register of May 11, 1989, a total of \$1,080,766 will be awarded to nineteen applicants for funding, including D.C. Students in Court. Announcement of the grant awards to the other applicants was published in the August 15, 1989 issue of the Federal Register.

This one-year grant is awarded pursuant to authority conferred by sections 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

**DATE:** All comments and recommendations must be received by the Office of Field Services of the Legal Services Corporation on or before September 24, 1989.

#### FOR FURTHER INFORMATION CONTACT:

Charles T. Moses, III, Associate Director, or Victoria O'Brien, Counsel to the Director, Legal Services Corporation, Office of Field Services, 400 Virginia Ave., SW., Washington, DC 20024-2751, telephone number: (202) 863-1837.

**SUPPLEMENTARY INFORMATION:** This grant is issued to support the provision of legal services to eligible clients by law students from a consortium of five Washington, D.C. law schools. By funding the development and expansion of the D.C. Students in Court clinical program, the Corporation educates law students to the legal problems of poor persons. This clinical experience encourages future lawyers to become interested in the provision of legal services to poor persons, acting either as legal aid attorneys or through *pro bono* or reduced fee efforts as members of the private bar.

Dated: August 17, 1989.

Ellen J. Smead,

*Acting Director, Office of Field Services.*

[FR Doc. 89-19860 Filed 8-22-89; 8:45 am]

BILLING CODE 7050-1-M

### NUCLEAR REGULATORY COMMISSION

#### Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

##### I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 31, 1989 through August 11, 1989. The last biweekly notice was published on August 9, 1989 (54 FR 32704).



**NOTICE OF CONSIDERATION OF  
ISSUANCE OF AMENDMENT TO  
FACILITY OPERATING LICENSE AND  
PROPOSED NO SIGNIFICANT  
HAZARDS CONSIDERATION  
DETERMINATION AND  
OPPORTUNITY FOR HEARING**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to Room P-218, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 22, 1989 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a

request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no

significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.



Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

**Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts**

*Date of amendment request:* July 31, 1989

*Description of amendment request:* The proposed amendment would delete the onsite and offsite organization charts and specify general requirements in place of the deleted charts. The proposed change affects Section 6.0, "Administrative Control" of the Pilgrim Technical Specifications. The proposed change is submitted in accordance with the guidance provided in the NRC Generic Letter (GL) 88-06 dated March 22, 1988.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes proposed to remove corporate and plant organization charts from the Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously

evaluated. As stated in NRC Generic Letter 88-06, the requirements necessary for safe operation of the plant have been retained in the Technical Specifications; the changes do not eliminate or alter the functions previously reviewed; and the changes do not affect plant operation and design or create a new accident mode. The changes proposed were modeled after Enclosure 2 to NRC Generic Letter No. 88-06 in conformance with Commission requirements.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in a margin of safety because Boston Edison, through its quality assurance programs, its commitment to maintain only qualified personnel in positions of responsibility, and other required controls, assures that safety functions will be performed at a high level of competence. Therefore, removal of the organization charts from the Technical Specifications will not affect the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff agrees with the licensee's analysis. Therefore, based on its review, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

*Attorney for licensee:* W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

*NRC Project Director:* Richard H. Wessman

**Consolidated Edison Company of New York, Docket Nos. 50-003 and 50-247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York**

*Date of amendments request:* July 25, 1989

*Description of amendments request:* The proposed amendments would revise the "Indian Point Station Units 1 and 2 Physical Security Plan" to (1) redefine several vital areas of Indian Point 2 as Type I rather than Type II and vice versa, (2) make several changes for clarification and standardization of terminology, (3) remove several items

from the list of vital equipment but not actually remove the equipment from vital areas, and (4) remove the City Water Tank from the list of vital equipment and delete its vital area.

*Basis for proposed no significant hazards consideration determination:* The licensee provided the following analysis of the proposed changes:

The Commission has provided guidance concerning the application of the standards for determining whether "significant hazards considerations" exist by providing certain examples at 51 FR 7744 (March 6, 1986). Example (i) of 51 FR 7744 which applies to editorial changes, states:

"(i) a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

Although the example cited in 51 FR 7744 refers specifically to proposed change to technical specifications, it is understood that the intent of the guidance is that it apply to license amendment changes, in general, including Physical Security Plan changes such as proposed herein. With the exception of the proposed change to delete the City Water Tank from Table 3.2, the changes to the Physical Security Plan proposed in this application are shown not to involve a significant hazards consideration by reason of the guidance in example (i) above since they amount to merely administrative changes such that there are no functional alternatives being made. Note that the level of security afforded Type I and Type II vital areas at Indian Point is identical and this policy will not change without another amendment request. Likewise, the deletion of items, other than the City Water Tank, from the list of vital equipment will not alter their physical location within vital areas.

Concerning the remaining proposed change, the Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed amendments have been evaluated below and determined not to involve a Significant Hazards Consideration.

(1) Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The City Water Tank is utilized for normal plant operation and may be used as a backup to safety equipment cooling. Its damage or destruction would not cause or increase the probability or consequences of an accident since safety-related vital equipment would not be affected by such



sabotage and would, therefore, remain operable. Therefore, since sabotage in a non-vital area can be assumed to be successful but safety-related equipment in vital areas is assumed to operate as required, the deletion of this item from the list of vital equipment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Deletion of this item from the vital equipment list implies that we must assume its inoperability in the event of successful sabotage. Such inoperability, caused by damage or destruction, would be serious enough to cause reactor shutdown as required by Technical Specifications but would not result in any previously unanalyzed accident. Overall plant design is such that adequate safety-related equipment and cooling to that equipment exists to bring the plant to a safe shutdown and assure that escalation of an accident beyond the damage to this non-vital piece of equipment would not occur. Successful sabotage of the item deleted from the list of vital equipment with this proposed revision would, therefore, not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Do the proposed changes involve a significant reduction in the margin of safety?

No. Deletion of this item from the vital equipment list and its subsequent inoperability or destruction due to successful sabotage could yield a forced plant shutdown as required by Technical Specifications. The other consequences of such sabotage would be the elimination of certain backup systems which are not required or relied upon for accident prevention or mitigation purposes. This effect would not be a significant one since the functionally equivalent safety-related vital equipment would not be adversely affected. Therefore, the overall margin of safety would not be significantly reduced.

The staff agrees with the licensee's analysis. Therefore, based on the above, the staff proposes that the proposed amendment will not involve a Significant Hazards Consideration.

**Local Public Document Room**  
location: White Plains Public Library,  
100 Martine Avenue, White Plains, New  
York, 10610.

**Attorney for licensee:** Brent L.  
Brandenburg, Esq., 4 Irving Place, New  
York, New York 10003

**NRC Project Director:** Robert A.  
Capra

**Duquesne Light Company, Docket No.**  
50-412, Beaver Valley Power Station,  
Unit No. 2, Shippingport, Pennsylvania

**Date of amendment request:** July 27,  
1989

**Description of amendment request:**  
The proposed amendment would revise  
Section 4.7.12 of the Technical  
Specifications to relax the surveillance

frequency of failed snubbers resulting from isolated damage events that cannot be related generically to other snubbers. Specifically, the proposed changes would eliminate the requirement to reduce the surveillance intervals for cases that result from isolated damage. In addition, another change would permit either satisfactory functional test result, or applied remedy be the basis to declare snubbers as operable for the purpose of establishing the next inspection interval. Both these changes have been implemented in the Unit 1 Technical Specifications.

**Basis for proposed no significant hazards consideration determination:**  
The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed changes do not involve any changes to plant hardware or operating procedures. All snubbers and related components will continue to be visually and functionally inspected in accordance with the current specifications, and hence the overall operability of the snubbers are not affected. Thus the answers to the first 2 criteria are negative. None of the previous safety analyses are affected, and no safety assumptions need to be changed. Thus the answer to criterion (3) is also negative. The staff therefore proposes to determine that the requested amendment involves no significant hazards considerations.

**Local Public Document Room**  
location: B. F. Jones Memorial Library,  
663 Franklin Avenue, Aliquippa,  
Pennsylvania 15001.

**Attorney for licensee:** Gerald  
Charnoff, Esquire, Jay E. Silberg,  
Esquire, Shaw, Pittman, Potts &  
Trowbridge, 2300 N Street, NW.,  
Washington, DC 20037.

**NRC Project Director:** John F. Stolz

**Florida Power and Light Company, et al.,**  
Docket Nos. 50-335 and 50-389, St. Lucie  
Plant, Unit Nos. 1 and 2, St. Lucie  
County, Florida

**Date of amendment requests:** July 26,  
1989

**Description of amendment requests:**  
These proposed amendments would

revise Technical Specifications Sections 3.7 for both units to clarify testing requirements for the main feedwater line isolation valves and the main steam line isolation valves (MSIVs).

**Basis for proposed no significant hazards consideration determination:**  
The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

#### Criterion 1

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The bases for Technical Specifications 3.7.1.5 for Units 1 and 2 and Technical Specification 3.7.1.6 for Unit 2, state that the main steam isolation valves and main feedwater isolation valves are maintained in the closed position to ensure that the consequences of an excess steam demand event are limited. With the main steam line isolation valves and the main feedwater line isolation valves maintained closed the functional design bases under accident conditions are met by prohibiting the blowdown of both steam generators and ensuring that all main feedwater flow is stopped. Therefore, the potential for excessive cooldown of the reactor coolant system, and the accompanying return to power from subcritical conditions, are reduced by the proposed license amendment.

Adding the statement regarding the inapplicability of Technical Specification 3.0.4 to the Unit 1 MSIV specification is administrative in nature, and brings the Unit 1 specification into agreement with the Combustion Engineering (CE) Standard Technical Specifications. Changing modes with the MSIVs closed does not involve any increase in accident probability or consequences because these valves will already be in their required accident position.

#### Criterion 2

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Maintaining the main steam isolation valves and main feedwater isolation valves closed in Modes 2 through 4 does not create a new or different kind of accident from any previously established. Overpressurization of



the main steam lines when the main steam line isolation valves are closed is prevented by the safety valves on the main steam lines. The availability of feedwater to the steam generators is ensured by the operability requirements for the auxiliary feedwater system.

Allowing Unit 1 to change modes while both main steam line isolation valves are closed is in accordance with the CE Standard Technical Specifications, and will not create the potential for a new or different kind of accident or event.

#### Criterion 3

Use of the modified specification would not involve a significant reduction in a margin of safety.

By maintaining the main steam line and main feedwater isolation valves in a closed position, the potential consequences of a steam line break event are minimized, and the margins of safety provided in the accident analyses of record are increased.

Based upon the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any previously evaluated, or (3) involve a significant reduction in a margin of safety, and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the TS involve no significant hazards considerations.

#### Local Public Document Room

location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: July 26, 1989

Description of amendment request: This amendment revises Action f. of Technical Specification 3.8.1.1. to make it consistent with the Emergency Diesel Generator testing action requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or

consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

#### Criterion 1

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR) has not been affected as the proposed change is administrative in nature, and is intended to restore consistency in testing requirements for the emergency diesel generators when one offsite power source is inoperable. No parameters which affect the probabilities of occurrence of any accident are affected by this change.

The consequences of an accident previously evaluated in the UFSAR have not been increased as the proposed surveillance requirements will not adversely affect the operation or operability of the diesels or any other safety related equipment.

The probability of a malfunction of equipment important to safety has not changed since reducing the test frequency of the diesel generators and modifying the starting requirements to be consistent with the manufacturer's recommendations are intended to enhance diesel reliability by minimizing severe test conditions which can lead to premature failures.

#### Criterion 2

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is administrative in nature and is intended to restore consistency between ACTION statements relative to the starting of emergency diesel generators when one offsite power source is inoperable. The net effect of this change is to reduce the diesel generator testing frequency and starting requirements such that there is still a high degree of assurance that they would operate, if called upon, when one offsite circuit is inoperable, and has no impact on actual accident analysis.

The possibility of a malfunction of equipment important to safety of a different type than any analyzed in the UFSAR has not been increased in that the proposed license amendment incorporates the starting and testing requirements recommended by Generic Letter 84-15. The intent of the change is to enhance the reliability of the emergency diesel generators by adherence to manufacturer recommendations regarding engine prelude and warmup.

#### Criterion 3

Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed change restores consistency between action statements in St. Lucie Unit 2

Technical Specification 3/4.8.1.1, reducing the frequency of diesel engine starts and diesel engine fast, cold starts while providing a high degree of assurance that they would operate, if called upon, when one offsite power circuit is inoperable. The reduction of diesel generator testing frequency should increase the reliability of the diesel generators because the diesel engines will be properly conditioned before startup and the number of starts decreased to reduce wear.

Based upon the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any previously evaluated, or (3) involve a significant reduction in a margin of safety, and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the TS involve no significant hazards considerations.

#### Local Public Document Room

location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 28, 1989

Description of amendment request: The proposed amendment would revise License Condition 2.C(14), Emergency Response Capabilities, Attachment 5, Item 3. Item 3 of Attachment 5 to the license specifies the schedule for implementation of modifications (installations or upgrade) for neutron flux monitoring consistent with the guidance of Regulatory Guide 1.97, Revision 2 or the NRC Staff's Safety Evaluation Report (SER) of the BWR Owners Group (BWROG) Licensing Topical Report (NEDO-31558, Position on NRC Regulatory Guide 1.97, Revision 3, Requirements for Post-Accident Neutron Monitoring System). The current schedule, as established by Amendment No. 28 to the license, states that modifications, if required shall be completed before restart from the next refueling outage starting after 10 months from the date of receipt of the NRC Staff SER on NEDO-31558, but no later than January 1, 1991 unless otherwise notified in writing by the NRC staff.



The proposed change would modify the implementation schedule to state that modifications, if required, shall be completed before restart from the next refueling outage starting after 18 months from the date of receipt of the NRC Staff SER on NEDO-31558. The licensee's submittal indicates that the reason for the proposed change is that an 18-month period is required from initial specification release to completed installation of the neutron monitoring system (NMS).

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this proposed change because:

There is no change in system design or operation. The license condition currently requires upgrade of NMS during the third refueling outage. This proposed change will allow operation with the currently installed NMS which has been found to comply with all criteria proposed in the BWROG letter. This system is required to provide neutron flux indication and is not postulated to initiate any accidents. The NMS is used to verify reactor shutdown as part of the Emergency Operating Procedures (EOPs). The use of neutron monitoring in the EOPs is conservative in that, if it is not available, actions are specified which will lead to safe shutdown without the system. The requirements of RG 1.97 concerning neutron monitoring are additions to the existing system abilities. Therefore, delay in upgrade to RG 1.97 requirements will not significantly increase the probability of an accident and would not lead to an increase in the consequences of an accident as defined in the safety analysis because of the conservative EOP actions.

2. This proposed change will not create the possibility of a new or different kind of accident than any previously evaluated because:

The current system has been evaluated using alternate criteria proposed in NEDO-31558 and found acceptable for continued operation. This change does not involve any changes to design or operation. In addition,

the neutron monitoring system is not postulated as the initiator of any accidents. Therefore, no new or different accidents are created.

3. This proposed change does not involve a significant reduction in the margin of safety because:

Design, function, and operation of the existing NMS remain the same. There is no specific "margin of safety" associated with this system as used in RG 1.97 other than to assure reactor shutdown following a transient or accident. EOP actions are conservative with respect to the use of the NMS for verification that the reactor is shutdown. When not available during an accident or transient scenario, actions are specified which will lead to safe reactor shutdown. Because these actions lead to a safe plant condition (reactor shutdown), the margin of safety is not reduced. In addition, this request does not result in a reduction to the margin of safety as defined in the bases of the RBS Technical Specifications.

Because the present RBS design meets all criteria provided in the BWROG License Topical Report, NEDO-31558, which was submitted to the NRC April 1, 1988, as supported by the plant-specific evaluation attached [to the June 28, 1989 submittal], extension of the implementation date for a NMS meeting RG 1.97 guidance is justified. This proposed extension allows the NRC to complete their evaluation of the report, which provides an alternative design as allowed by the current license condition to comply with the RG 1.97 requirements. In addition, GSU will be able to better plan its resource utilization to address the NMS pursuant RG 1.97 after the Staff's SER is received.

The NRC staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

**Local Public Document Room location:** Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

**Attorney for licensee:** Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

**NRC Project Director:** Frederick J. Hebdon

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

**Date of amendment request:** October 13, 1987

**Description of amendment request:** The proposed amendment would revise Technical Specification (TS) Table 3.2-B, "Instrumentation That Initiates or Controls the Core and Containment Cooling Systems." The revision of TS Table 3.2-B would reflect the Containment High Pressure trip level setting to be greater than 2 psig, rather than the current setting of greater than 1

psig but less than 2 psig. Additionally, the remarks section of TS Table 3.2-B would be revised to state "Prevents inadvertent operation of containment spray during normal operation," rather than during "...accident condition". These revisions are necessary to resolve an inconsistency between the DAEC Final Safety Analysis Report (FSAR) and the DAEC TS.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in its request for a license amendment. The licensee has concluded that the TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated because this change to the TS would resolve an inconsistency in the instrument setpoint dealing with the control of the containment spray system at primary containment pressures below 2 psig. The resolution of the inconsistency would not increase the probability or consequences of an accident previously evaluated.

The licensee has concluded that the TS change would not create the possibility of a new or different kind of accident because this change would resolve an inconsistency in the TS to reflect an accident that has previously been evaluated in the FSAR. Therefore, no possibility of a new or different kind of accident would be created by the TS modification.

Finally, the licensee has concluded that the TS change would not involve a significant reduction in the margin of safety because the proposal would not change the original margin of safety.

The staff has reviewed the licensee's evaluation of the proposed changes and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the proposed change to the Technical Specifications does not involve a significant hazards consideration.



*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

*Attorney for licensee:* Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, DC 20036.

*NRC Project Director:* John N. Hannon.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

*Date of amendment request:* June 1, 1989

*Description of amendment request:* The proposed amendment would revise Technical Specification Table 4.6.2g, Instrumentation That Initiates Control Rod Withdrawal Block - Surveillance Requirement and Table 4.6.2g Note (g) to delete surveillance requirements that are either inapplicable or cannot be performed due to instrument design limitations. The proposed changes will (1) remove the surveillance requirement to calibrate the Detector Not In Startup Position control rod block instruments associated with the Source Range Monitoring (SRM) and the Intermediate Range Monitoring (IRM) instrument channels, (2) remove the surveillance requirement to calibrate the SRM and the IRM Instrument Inoperative control rod block instrument channels, (3) remove the surveillance requirement to perform sensor checks on the SRM and the IRM control rod withdrawal block instrumentation and (4) revise Note (g) to Table 4.6.2g to reflect the changes made to the table and the deletion of the requirement to calibrate SRM and IRM rod block instrumentation prior to shutdown.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The staff has reviewed the licensee's submittal and concludes:

1. The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment, will not involve a significant increase in the probability or

consequences of an accident previously evaluated because the deleted surveillance requirements will not have an adverse effect upon the ability of the Control Rod Block circuitry to perform its intended safety function.

The SRM and IRM systems provide multi-channel monitoring of the core thermal neutron flux during startup and low power operation. In addition, the SRM and IRM systems will initiate a rod withdrawal block for high neutron flux or channel malfunction conditions. Both the SRM and the IRM systems provide Detector Not In Startup Position, Inoperative and Upscale trip signals to the control rod withdrawal block circuitry and the IRM system provides a Downscale trip signal.

The SRM and the IRM Detector Not in Startup Position instrument channels initiate a control rod block to ensure that control rods are not withdrawn unless the appropriate detectors are properly positioned and capable of providing the operator and the circuitry with neutron flux information. The licensee has indicated that the design of these instrument channels does not allow the output of the detector to be varied in response to a variable test signal. Therefore, since the trip is either on or off in response to the detector position switch, it cannot be calibrated. The proposed change to delete the requirement to calibrate this function will not affect the ability of the rod block to function as required, since the performance of the associated functional tests at the existing Technical Specification required frequency verifies operability of the rod block function. Also, preventive maintenance realignment of the detector retraction mechanism limit switches each refueling outage ensures proper detector and position switch alignment.

An SRM and IRM instrument channel inoperative rod block is initiated on low detector voltage, electronics drawer internal module unplugged, or the channel mode switch not in the Operate position. Since none of these inputs require calibration, the proposed change to delete the surveillance requirement to calibrate the instrument channel Inoperative function will not affect their ability to initiate a rod block when required. Additionally, the functional tests on the instrument channels at the existing Technical Specification required frequency ensures operability of the rod block function.

The rod block instrument channels are digital/bistable channels and their output signal is either present or absent depending upon the state of the sensor. Because the conditions that generate an output signal (high neutron flux or

channel malfunction) are received only when the event is present, a qualitative determination of acceptable operability by observation or comparison with other independent sensors measuring the same variable (i.e., a sensor check) is not possible. Therefore, the proposed change to delete the sensor check requirement for the SRM and IRM instrument channels will not affect the ability of the channels to perform as required.

A control rod withdrawal block functions to prevent control rod withdrawal only. Therefore, the change to delete the requirement to calibrate the SRM and IRM rod withdrawal block instrument channels prior to shutdown (rod insertion) does not affect the ability of these channels to perform as required.

A proposed administrative change to Note (g) of Table 4.6.2g reflects the above proposed changes to Table 4.6.2g.

In summary, the proposed changes do not affect the analyses of abnormal operational transients or design basis accidents as presented in Section XV of the Final Safety Analysis Report. The proposed changes do not change the design or operation of the detector or instrumentation and, therefore, do not increase the probability or consequences of any accident previously evaluated.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated since the proposed changes do not alter the design or operation of the detector or instrumentation systems.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety because, as discussed previously, the deleted surveillance requirements are unnecessary and do not affect the ability of the Control Room Block circuitry to function as required.

Specifically, the SRM and the IRM Detector Not In Startup Position rod block instrument channel calibrations required by the existing Technical Specification are being deleted because the design of the instrumentation does not facilitate calibration. The performance of functional tests on the instrument channels and preventive maintenance checks of the detector limit switches presently required by the Technical Specifications adequately ensures instrument operability and alignment, respectively. Calibration of the SRM and the IRM instrument channel inoperative rod block required



by the existing Technical Specification is not necessary because the channel inputs do not require calibration.

The sensor checks required by the Technical Specifications are not applicable because sensor checks cannot be performed on the digital/bistable outputs from the SRM and IRM sensors that initiate control rod blocks (detector not in startup position, inoperative, upscale and downscale).

The requirement to calibrate Control Rod Withdrawal instrumentation prior to shutdown (control rod insertion) is not necessary since control rod withdrawal blocks are only applicable for rod withdrawal.

Based upon the above, the staff proposes that the amendment will not involve a significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*NRC Project Director:* Robert A. Capra

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

*Date of amendment request:* July 11, 1989

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TS) in response to NRC Generic Letter (GL) 88-06 "Removal of Organization Charts from Technical Specification Administrative Control Requirements" to: (1) remove the onsite and offsite organizational charts from TS Section 6.2.1 and 6.2.2, respectively and (2) make certain miscellaneous administrative changes in Section 6 of the TSs (Administrative Control) related to revisions to the corporate organization. GL 88-06 encourages licensees to propose changes to their TS to remove organizational charts from TS and replace them with descriptions of the organizational structure and characteristics which are important to safety. The proposed changes concern the Administrative Controls in Section 6.0, and do not affect any Limiting Conditions for Operation or Surveillance Requirements. The proposed changes in this amendment request are grouped into two categories, Category A and Category B. Category 'A' proposed changes involve removing the onsite and offsite organizational charts from TS

Sections 6.2.1 and 6.2.2, respectively. These proposed changes are consistent with the guidance provided in GL 88-06. Category 'B' proposed changes are five miscellaneous administrative changes. These proposed changes are to: (1) revise paragraphs in Sections 6.2 and 6.5 to reflect the new organization under the Executive Vice President-Nuclear, (2) revise paragraph 6.5.2.1 to indicate that the Nuclear Review Board (NRB) reports to and advises the Executive Vice President-Nuclear, (3) revise paragraph 6.5.2.9.C to indicate that NRB audit reports shall be forwarded to the Corporate Officer(s) responsible for the areas audited, (4) revise paragraphs 6.2.3.2 and 6.2.3.4 to reflect title changes and the deletion of the corporate Independent Safety Engineering Group and (5) revise paragraph 6.14.2 to reflect the groups responsible for technical review of the Offsite Dose Calculation Manual.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of the no significant hazards consideration in its request for a license amendment for each of the proposed changes discussed previously. The Staff has reviewed the licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 and finds that:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Removing the organization charts from TS does not affect plant operation. The proposed changes do not increase or decrease the qualification, experience or training requirements of onsite or offsite Limerick Generating Station (LGS) personnel. The LGS Quality Assurance Program contains detailed organization charts and associated descriptions of responsibilities. Appendix B to 10 CFR 50 and 10 CFR 50.54(a)(3) govern changes to the organizations described in the QA Program. In accordance with the

requirements of 10 CFR 50.34(b)(6) the applicant's organizational structure is included in the LGS Final Safety Analysis Report, Chapter 13. As required by 10 CFR 50.71(e), the licensee submits annual updates to the FSAR.

The administrative changes involving a position title change, creation of an advisory board, distribution of audit reports, ISEG composition, and elimination of unnecessary review details, do not involve the design or operation of plant hardware or systems. Accidents analyzed remain unaffected by these changes.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Removing the organization charts from TS does not affect plant operation. The proposed changes do not increase or decrease the qualification, experience or training requirements of onsite or offsite Limerick Generating Station (LGS) personnel. The LGS Quality Assurance Program contains detailed organization charts and associated descriptions of responsibilities. Appendix B to 10 CFR 50 and 10 CFR 50.54(a)(3) govern changes to the organizations described in the QA Program. In accordance with the requirements of 10 CFR 50.34(b)(6) the applicant's organizational structure is included in the LGS Final Safety Analysis Report, Chapter 13. As required by 10 CFR 50.71(e), the licensee submits annual updates to the FSAR.

The administrative changes involving a position title change, creation of an advisory board, distribution of audit reports, ISEG composition, and elimination of unnecessary review details, do not involve the design or operation of plant hardware or systems. No new modes of operation, changes to setpoints or changes in operating parameters result from this change.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The removal of the organization charts from TS is accompanied by the addition of requirements for the Limerick organizational structure which are needed to maintain the essential aspects of the material being removed. This will permit the implementation of organizational changes without prior NRC approval provided the change meets these added organizational structure requirements. Consequently, enhancements to the organizational structure, as well as minor administrative changes such as position title revisions, can be implemented promptly upon identification of the need



for the change thereby creating a positive impact on safety.

The administrative changes involving a position title change, creation of an advisory board, distribution of audit reports, ISEG composition, and elimination of unnecessary review details, do not involve the design or operation of plant hardware or systems. No new modes of operation, changes to setpoints or changes in operating parameters result from this change.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves no significant hazards consideration. Therefore, the Staff proposes to determine that the proposed amendment involves no significant hazards consideration.

**Local Public Document Room**  
location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

**Attorney for licensee:** Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

**NRC Project Director:** Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

**Date of application for amendments:** July 11, 1989

**Description of amendment request:** These amendments would remove the organization charts from the technical Specifications to the FSAR in response to the guidance set forth in the NRC staff's Generic Letter 88-06 "Removal of Organization Charts from Technical Specification Administrative Control Requirements." Several administrative changes involving changes in position titles and reporting relationships are also proposed. These proposed changes to the organization charts and the administrative changes have been grouped as Category A and Category B changes, respectively in the licensee's application.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a

significant increase in the probability or consequences of an accident previously evaluated (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below. The licensee has arranged these changes into two categories. The licensee's discussion of each of these categories is presented separately as follows.

#### **Standard 1**

The proposed Category 'A' changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Removing the organization charts from the Technical Specifications and replacing them with more general language does not affect plant operation. The proposed changes do not increase or decrease the qualification, experience or training requirements of onsite or offsite nuclear personnel. Additionally, the proposed changes do not affect the shift crew composition or the facility management positions requiring an NRC license.

The Peach Bottom Quality Assurance Plan contains detailed organization charts and associated description of individual and group responsibilities as they apply to the operation and support of the Peach Bottom facility. Appendix B to 10 CFR 50 and 10 CFR 50.54(a)(3) govern changes to the organization as described in the Quality Assurance Plan. 10 CFR 50.34(b)(6) requires that the organizational structure also be included in the Final Safety Analysis Report. Section 13 of the Updated Final Safety Analysis Report provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), this information must be maintained and updated annually. Based on this review, it is concluded that the proposed Category 'A' changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

#### **Standard 2**

The proposed Category 'A' changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature, and do not involve any physical alterations of plant configurations or changes to setpoints, or operating parameters. It is therefore concluded that removing the organization charts from the Technical Specifications does not create the possibility of a new or different kind of accident from any previously evaluated.

#### **Standard 3**

The proposed Category 'A' changes do not result in a significant reduction in the margin of safety.

Removing the organization charts from the Technical Specifications enhances the margin of safety by permitting an organizational change without NRC approval provided that the objectives of proposed paragraph 6.2.1 are met, thereby allowing a more timely

response to situations where the appropriate action is a prompt organizational change. Safety is further enhanced by providing clear and concise definitions of responsibility for the Shift Supervisor, Plant Manager and Vice President, Peach Bottom Atomic Power Station. Further, the proposed changes include additional administrative controls which capture the essential aspects of the material being removed such that the associated requirements will continue to be met. Based on this review, it is concluded that the proposed Category 'A' changes do not result in a significant reduction in the margin of safety, but improve the margin of safety.

#### **Standard 1**

The proposed Category 'B' miscellaneous changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Replacing the technical Engineer with the Engineer-Systems on the PORC will not decrease the effectiveness of the PORC. As required by proposed specification 6.2.2.g, either the Superintendent-Technical or the Engineer-Systems will hold a Senior Reactor Operator license, thereby ensuring the level of plant operations expertise of the PORC.

Sufficient corporate management involvement in nuclear plant safety will be maintained with the elimination of the direct reporting requirement of the NRB to the Office of the Chief Executive. The Office of the Chief Executive will be made aware of NRB activities by the Nuclear Committee of the Board through the Board of Directors and by the Executive Vice President-Nuclear.

Designating Corporate Officer(s) responsible for the areas audited instead of the Executive Vice President-Nuclear as the recipient(s) of NRB audit reports is a more appropriate initial level of review. The Corporate Officers have a closer proximity to the sources of problems and therefore can take prompt corrective actions. If NRB audit findings are not satisfactorily addressed by the Corporate Officer(s), the NRB may inform the Executive Vice President-Nuclear through its normal communication channel as defined in Specification 6.5.2.9.

Section 14 of the PBAPS UFSAR has been reviewed to determine the effect of the proposed administrative changes on previously evaluated accidents. It is concluded that the accident analyses in Section 14 of the UFSAR are not affected by the proposed miscellaneous changes. For this reason, as well as the reasons presented above, it is concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

#### **Standard 2**

The proposed Category 'B' miscellaneous changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The implementation of these miscellaneous changes will not affect the interpretation or intent of the specifications they involve (6.5.1.2, 6.5.2.9 and 6.5.2.10.c). These changes are purely administrative and do not involve any hardware changes or plant modifications. Therefore, these changes will not create the



possibility of a new or different kind of accident from any previously evaluated.

#### Standard 3

The proposed Category 'B' miscellaneous changes do not involve a significant reduction in a margin of safety.

The administrative nature of these changes will not impact plant systems or operation. For this reason, as well as the reasons presented in the Safety Assessment and in response to item 1 above, it is concluded that these changes will not involve any reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination for the Category A and B changes discussed above and agrees with the licensee's analysis. Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

#### Local Public Document Room

location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

#### Date of application for amendments:

July 19, 1989

#### Description of amendment request:

The proposed amendments would eliminate the requirement for use of the Rod Sequence Control System (RSCS) and would decrease the power level setpoint above which the Rod Worth Minimizer (RWM) would no longer be required to be used from the existing 25% power level requirement at both units to a new 10% power level setpoint. The licensee states that these proposed amendments are based on and are consistent with the NRC Safety Evaluation Report issued to J. S. Charnley on December 27, 1987, which approved Amendment 17 of General Electric Topical Report NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel".

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards

consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below.

**Standard 1:** The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Deleting the RSCS and changing the low power set point on the RWM has no effect on the probability of equipment malfunction in other systems or within the RWM.

The probability of occurrence of an accident is not affected by this change. The probability of an RDA is dependent only on the control rod drive system and mechanisms themselves, and not in any way on the RSCS or RWM.

The consequences of an RDA as evaluated in the PBAPS UFSAR will not be affected by this modification. An extensive probabilistic study was performed by the NRC staff (letter and enclosure from B. C. Rusche, NRR, to R. Fraley, ACRS, dated June 1, 1976, "Generic Item IIA-2 Control Rod Drop Accident (BWRs)"). This study indicated that there was not a need for the RSCS. Furthermore, improved methodologies in the RDA analysis methods (e.g. BNL-NUREG 28109, "Thermal-Hydraulic Effects on Center Rod Drop Accidents in a Boiling Water Reactor," October 1980) indicated that the peak fuel enthalpies resulting from an RDA are significantly lower than previously determined by less refined methodologies.

The RSCS duplicates the function of the RWM. So long as the RWM is operable, the RSCS is not needed since the RWM prevents control rod pattern error. In the event the RWM is out of service, after the withdrawal of the first 12 control rods, the proposed Technical Specifications require that control rod withdrawal movement and compliance with the prescribed control rod pattern be verified by a second licensed operator or technically qualified member of the station technical staff. The verification process is controlled procedurally to ensure a high quality, independent review of control rod movement. In addition, to further minimize control rod movement at low power with the RWM out of service, the proposed Technical Specifications will permit only one plant start-up per calendar year with the RWM out of service prior to or during the withdrawal of the first twelve control rods. All the above taken together demonstrate consistency and applicability to those conclusions reached in the referenced NRC SER, and substantiate the conclusion that there will be no increase in the consequences of an RDA as evaluated in the FSAR as a result of eliminating the RSCS.

There will also be no increase in the consequences of an RDA as evaluated in the UFSAR due to lowering the RWM set point from 25% to 10%. The effects of an RDA are more severe at low power levels and are less severe as power level increases. Although the original calculations for the RDA were performed at 10% power, the NRC required that the generic BWR Technical Specifications be written to require operation of the RWM below 25% power in order to ensure conservatism. However, GE continued to perform the RDA analyses at and below 10% power because these produced more conservative analytical results. More refined calculations by BNL (BNL-NUREG 28109, "Thermal-Hydraulic Effects on Center Rod Drop Accidents in a Boiling Water Reactor," October 1980) have shown that even with the maximum single control rod position error, and most multiple control rod error patterns, the peak fuel rod enthalpy reached during an RDA from these control rod patterns would not exceed the NRC limit of 280 cal/gm for RDAs above 10% power, confirming the original GE analyses. Hence, lowering the RWM set point from 25% to 10% will not result in an increase in the consequences of an RDA as evaluated in the UFSAR. The previously referenced NRC SER has concluded this RWM set point reduction to be acceptable.

**Standard 2:** The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the RSCS and RWM cannot cause or prevent an accident. They function to minimize the consequences of an RDA. The RDA is already evaluated in the UFSAR, and the effect of this proposed change on the analyses is discussed in Item 1 above.

Elimination of the RSCS and lowering the RWM set point will have no impact on the operation of any other systems, and hence would not contribute to a malfunction in any other equipment nor create the possibility for an accident to occur which has not already been evaluated.

**Standard 3:** The proposed revisions do not involve a significant reduction in a margin of safety.

Elimination of the RSCS will not lower the margin of safety for the reasons discussed in Item 1 above and summarized below:

a) An extensive NRC study has determined that the possibility of an RDA resulting in unacceptable consequences is so low as to negate the requirement for the RSCS.

b) Recent calculations have determined that the consequences of an RDA are acceptable above 10% power.

c) The RSCS is redundant in function to the RWM. Eliminating the RSCS does not eliminate the control rod pattern monitoring function performed by the RWM.

d) To ensure that the RWM will be in service when required, the proposed RWM Technical Specification will be revised to allow only one startup per calendar year with the RWM out of service prior to or during the withdrawal of the first twelve control rods. If the RWM is out of service below 10% power, control rod movement and compliance with prescribed control rod patterns will be



verified by a second licensed operator or technically qualified member of the station technical staff. This situation is controlled by station procedure which specifically requires the following:

- Plant Management approval is required in order for the operator to bypass the inoperable RWM.
- A second operator or technically qualified staff member, with no other duties, is required to verify the first operator's actions while the first operator performs rod movements.
- The startup and the shutdown sequences with their respective signoff sheets provide for verification by the second operator after each rod movement step is completed by the first operator.
- The startup and shutdown sequences follow the same control rod patterns that the RWM enforces if it were not bypassed.

There is no significant reduction in the margin of safety resulting from lowering the RWM set point from 25% to 10% because calculations by GE and BNL have shown that even with the maximum single control rod position error, and most multiple error patterns, the peak fuel rod enthalpy during an RDA from these patterns would not exceed the NRC limit (280 cal/gm) above 10% power.

In summary, GE has provided technical justification for the proposed changes in the Topical Report NEDE-24011-P-A and associated references which justify the acceptability of the proposed changes.

The NRC has reviewed and accepted the GE analysis and provided guidelines for licensees wanting to make the changes proposed in NEDE-24011-P-A and approved in the NRC SER issued December 27, 1987 to J.S. Charnley of General Electric.

The proposed changes are consistent with those approved in the NRC SER and the guidelines set forth therein. Therefore, there is no significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

**Local Public Document Room location:** Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

**Attorney for Licensee:** Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

**NRC Project Director:** Walter R. Butler

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York**

**Date of amendment request:** May 31, 1989 and amplified by letter dated July 7, 1989

**Description of amendment request:** The proposed amendment would modify the core spray (CS) pump flow rate test requirements to make the wording more consistent with the wording of the flow rate test requirements of other pumps in the Emergency Core Cooling System. Presently, the CS pump test requirement in Specification 4.5.A.1.b states that the "Core Spray shall deliver at least 4625 gpm against a system head corresponding to a total pump developed head of greater than or equal to 113 psig." The amendment would change this to read that the "Core Spray pumps shall deliver at least 4625 gpm against a system head corresponding to a reactor vessel pressure of greater than or equal to 113 psi above primary containment pressure."

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as stated in 10 CFR 50.92, since it would not:

1. involve significant increase in the probability or consequences of an accident previously evaluated. The intent of the proposed change is to clarify and correct the Technical Specifications. The change is purely administrative in nature. There are no setpoint changes, safety limit changes, or changes to limiting conditions for operation. The proposed change assures that the core spray system is tested in accordance with the assumptions contained in the existing accident analyses. This change has no impact on plant safety operations. The change will have no impact on previously evaluated accidents.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed change is purely administrative in nature and is intended to clarify and improve the quality of the Technical Specification. The change cannot create the possibility of a new or different kind of accident.

3. involve a significant reduction in the margin of safety. The proposed change

corrects an error which currently exists in the Technical Specifications. The change is administrative in nature and will clarify the specifications. This change does not contain any setpoint or safety limit changes regarding isolation or alarms. The proposed change does not affect the environmental monitoring program. This change does not negatively affect the plant's safety systems and does not reduce any safety margins.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

**Local Public Document Room location:** State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

**Attorney for licensee:** Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

**NRC Project Director:** Robert A. Capra

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

**Date of amendment request:** July 9, 1987

**Description of amendment request:** The licensee proposes to modify the Salem Unit 1 and Unit 2 Technical Specifications by:

1. Changing the channel description format for item 7.a of Table 3.3-3, Loss of Voltage, to specify that the total number of channels is 1 per bus.

2. For Item 7.b of Table 3.3-3, Sustained Degraded Voltage, changing the Total Number of Channels, Channels to Trip and Minimum Channels Operable to 3 per bus, 2 per bus and 3 per bus, respectively.

3. For Item 7.b of Table 3.3-4, Sustained Degraded Voltage, changing the Trip Setpoint to greater than or equal to 91.6 percent of bus voltage for less than or equal to 13 seconds and changing the Allowable Values to greater than or equal to 91 percent of bus voltage for less than or equal to 15 seconds.

**Basis for proposed no significant hazards consideration determination:**

Item 1, Table 3.3-3 Item 7.a

This item is being revised to be consistent with the channel description format used for other items in this Table. This is an editorial change only. No modification is being made to the primary undervoltage protection system.

Item 2, Table 3.3-3 Item 7.b

The second level undervoltage protection system has been redesigned



as a result of an event which occurred at Salem Unit No. 2 on August 26, 1986. Immediately following a reactor trip with safety injection, the Unit 2 vital buses began flip-flopping between the No. 21 and 22 Station Power Transformers (SPT) (preferred source of power) until they eventually separated from the offsite power system. The previous design provided for the transfer of a vital bus to the alternate SPT whenever the secondary voltage for its designated SPT dropped below 91 percent of rated bus voltage for greater than 10 seconds. This function was controlled by 2 relays on each vital bus. These relays were positioned such that they monitor the secondary voltage of each of the SPT (1 per SPT). In addition to initiating the transfer function these relays provided a transfer permissive signal such that a vital bus could not be transferred unless the alternate SPT has an acceptable secondary voltage. A separate relay monitored vital bus voltage and provided an input to each of the three Safeguards Equipment Controllers (SEC) such that, for a sustained degraded voltage (less than 91 percent for greater than 13 seconds) condition on 2 out of 3 vital buses, all vital buses were separated from the offsite source and sequenced onto the emergency source.

As redesigned, the transfer function was eliminated. The existing transfer relays were replaced with relays of similar design but with improved setpoint drift characteristics. These new relays (1 per bus) were connected to operate in parallel with the previous vital bus degraded voltage relay. The previous vital bus degraded voltage relay was also replaced with an upgraded relay. The interface with the SEC was then reconfigured from its previous 2 out of 3 bus design to a 2 out of 3 relay per bus design. A failure analysis has been completed by the licensee for each component in the system and demonstrates that no single failure will result in the creation of an unanalyzed condition. The new configuration: (1) eliminates the possibility of vital bus flip-flopping, (2) provides for the separation of the vital buses from the preferred source on an individual basis only, and (3) satisfies General Design Criterion 17 relative to maintaining the connection between the offsite source and the onsite distribution system.

#### Item 3, Table 3.3-4 Item 7.b

This table is being revised to: (1) incorporate the revised trip setpoint for the second level undervoltage protection relays, and (2) to correct the allowable value for second level undervoltage

protection. The present Technical Specification allowable value for second level undervoltage protection is in error as it does not reflect an allowance for line loss due to cable length (about 0.7 percent). However, the present trip setpoint for the second level undervoltage protection system (equal to or greater than 91 percent) provides sufficient margin to account for these losses. The new trip setpoint of greater than or equal to 91.6 percent is based on the results of detailed analyses of the Salem Generating Station electrical distribution system transient response characteristics. Those analyses indicate that, at the Public Service Electric and Gas (PSE&G) bulk power system minimum expected value of 505 KV and for a LOCA on one Salem Unit and a concurrent orderly shutdown of the other Unit, vital bus voltage will recover to a worse case value of about 92.9 percent. The minimum allowable trip value and trip setpoint are derived using the 90 percent minimum motor terminal voltage requirement as a starting point, and then applying appropriate allowances as provided in Regulatory Guide 1.105.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

1. For Item 7.b of Table 3.3-3, the licensee has analyzed the proposed amendment to determine if a significant hazard exists:

1) The proposed changes do not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The failure analysis [performed by the licensee] demonstrates that no single failure results in the existence of an unanalyzed condition. Additionally, the second level undervoltage protection system does not provide an input to the Reactor Protection System nor can it cause any one of the incoming 500 KV sources to be isolated from the Salem Station electrical distribution system. All equipment used in the system will be seismically qualified. Therefore, the probability of occurrence of an accident remains unchanged.

The second level undervoltage system is required to protect against those events (e.g. bulk power system degradation) which result in a degraded voltage at the vital buses but which do not result in a complete loss of

voltage. The modified system continues to satisfy this requirement as previously discussed. Additionally, by eliminating the ability to transfer between SPTs, the potential for damage to safety related motors from frequent starts is eliminated. The increased redundancy in the SEC logic inputs provides greater assurance that the system will perform its intended function. Therefore, the consequences of previously analyzed accidents remain unchanged.

2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. As demonstrated in [the failure analysis], no single failure will result in the existence of an unanalyzed condition. The second level undervoltage system does not provide any input to the Reactor Protection System nor can it cause any one of the incoming 500 KV sources to be isolated from the Salem Station electrical distribution system. The modified design eliminates the possibility of flip-flopping of the vital buses between offsite power sources and thereby assures the availability of all safety related equipment.

3) The proposed changes do not involve a significant reduction in a margin of safety. The changes to the second level undervoltage system maintain the existing margin of safety by eliminating the transfer between offsite sources, thereby assuring that the integrity of safety related electrical equipment is maintained. The additional redundancy provided in the revised design enhances the overall reliability of the system and further assures that the system function will be completed.

The staff has reviewed the licensee's significant hazards consideration determination analysis for the changes associated with Item 7.b of Table 3.3-3 and concurs with the licensee's determination that the proposed changes do not involve a significant hazards consideration.

2. With respect to the proposed change to Item 7.a of Table 3.3-3 and Item 7.b of Table 3.3-4, the Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 by providing certain examples (51 FR 7751). One of the examples, (i), of an amendment likely to involve no significant hazards consideration relates to "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature."

Another example, (ii), of an amendment likely to involve no significant hazards consideration relates to "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement."

(a) Item 7.a of Table 3.3-3



The change from 3 to 1 per bus is a change in nomenclature. There are 3 buses, each equipped with a shutdown channel so the change to 1 per bus meets example (i).

(b) Table 3.3-4, Item 7.b, Allowable Value

The current Technical Specifications do not take into account the line loss (voltage drop) because of cable length. This change will correct that and therefore, meets example (i).

(c) Table 3.3-4, Item 7.b Trip Setpoint  
Changing the value from greater than or equal to 91 percent to greater than or equal to 91.6 percent is a more stringent requirement. Therefore this change meets example (ii).

Based on the above the staff proposes to determine that the changes to Table 3.3-3, Item 7.a and Table 3.3-4, Item 7.b do not involve a significant hazards consideration because they change the nomenclature, correct an error or provide a more stringent requirement.

**Local Public Document Room**  
location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

**Attorney for licensee:** Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

**NRC Project Director:** Walter R. Butler

**Public Service Electric & Gas Company,**  
Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

**Date of amendment request:** January 26, 1989 and May 22, 1989

**Description of amendment request:** By letter dated January 26, 1989, the licensee proposed to withdraw the wording in their June 23, 1988 letter, of Surveillance Requirement 4.1.3.4.a (no change from current Technical Specifications).

By letter dated May 22, 1989, the licensee proposed to modify Surveillance Requirement 4.1.3.4 and 4.1.3.5 by adding a footnote as follows: "For power levels below 50 percent one hour thermal 'soak time' is permitted. During this soak time, the absolute value of rod motion is limited to six steps.

This is applicable prior to verification of rod positions.

The original request, dated June 23, 1988, was noticed on January 11, 1989 (54 FR 1024).

**Basis for proposed no significant hazards consideration determination:** The licensee's January 26, 1989 letter withdrew a proposed change in Surveillance Requirement 4.1.3.4.a that would have replaced "Within 15 minutes

prior to withdrawal of any rods in control banks A, B, C or D during an approach to reactor critically (sic)" with "Within 15 minutes prior to withdrawal of any control bank during an approach to reactor critically (sic)". Because this change was not discussed in the licensee's June 23, 1988 application the licensee was asked to justify the change. The licensee chose to withdraw the change. Therefore, no change is being proposed to this section.

The original application would have, among other things, deleted any reference to a waiting period before rod position verification after rod motion. Because individual rod position indication is subject to thermal transients, it is important that thermal equilibrium be achieved before rod position verification at power levels below 50 percent. In their May 22, 1989 letter, the licensee opted to include a footnote to Surveillance Requirements 4.1.3.4 and 4.1.3.5 to allow a one-hour thermal soak period before rod position verification to allow thermal equilibrium to be reached at powers below 50 percent. Also, during the soak time rod motion would be limited to six steps absolute. For powers above 50 percent, rod motion is expected to be small and will not induce significant thermal transients.

In the initial application the licensee had determined that the proposed change did not constitute a significant hazards consideration. The staff reviewed the licensee's analysis and concurred with the licensee's determination that the proposed amendment did not involve a significant hazards consideration. The staff had proposed to determine that the proposed amendment involves no significant hazards consideration [54 FR 1024 dated January 11, 1989].

The licensee has reviewed the original Significant Hazards Consideration and determined: The proposed changes do not affect the previously submitted Significant Hazards Consideration.

The staff has reviewed the licensee's analysis and concurs with the licensee's determination that the proposed amendment change does not involve a significant hazards consideration and the original significant hazards consideration remains valid. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

**Local Public Document Room**  
location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

**Attorney for licensee:** Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747

Pennsylvania Avenue, NW., Washington, DC 20006

**NRC Project Director:** Walter R. Butler

**Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

**Date of amendment requests:** June 20, 1989, as supplemented by letter of July 25, 1989 (TS 271)

**Description of amendment requests:** The proposed changes would delete Technical Specification (TS) 3.10.B.1.b.2 and 3.10.B.1.3 which currently allow reactivity additions without continuous core monitoring. Other proposed changes would correct certain identified deficiencies, thereby, resulting in more conservative controls during fuel load and bringing the Browns Ferry TS into consistency with the staff's guidance in the Standard Technical Specifications for Boiling Water Reactors (NUREG-0123).

**Basis for proposed no significant hazards consideration determination:** The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. This proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design basis accident during core alterations is the dropping of a fuel assembly. Since these changes increase the monitoring requirements for core alterations and there is no new fuel handling activity introduced that was not previously allowed by the current technical specifications, there is no increase in the probability or consequence of the dropped assembly accident. These changes do not increase the probability or consequences of a control rod removal error or a fuel rod assembly insertion error. There is no increased probability or consequences of an accidental reactivity insertion or an inadvertent criticality.

2. This proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

These TS changes result in improved monitoring requirement during core alterations that would add reactivity. There are no new activities required during core alterations due to these proposed changes which could introduce any new or different accident. The deletion of the two options of loading fuel without continuous SRM



monitoring will require the use of fuel load chambers (FLCs) during part of the fuel loading. FLCs have been used during 13 previous fuel loadings at BFN. The proposed clarification of the TS allowing the SRM count rate to decrease below 3 cps during the special conditions specified for complete core unloading do not change the intent of the current TS. The Control Rods are fully inserted in the core and are electrically disarmed and cannot be moved. Therefore, no reactivity can be added by control rod movement. In addition, any fuel movements would be to remove a fuel assembly from the reactor core. In either case, no core alterations will be made that would increase core reactivity. All other changes are more conservative than the current TS requirements on core alterations, including normal control rod movement. Therefore, the possibility of a new kind of accident is not created.

3. This change does not involve a significant reduction in the margin of safety.

The only margin of safety applicable to fuel loading is the requirement for having 0.38 percent delta K shutdown margin. The proposed changes are conservative by requiring continuous SRM monitoring during core alterations which could add reactivity. In addition, the requirements for control rod withdrawal with the vessel head removed will be considered as a core alteration which is also more conservative than the current TS. The use of SRMs for core monitoring during core alterations is not taken credit for in any margin of safety as defined in the TS bases. Since these proposed TS changes are more restrictive, they will not result in the reduction of any margin of safety as defined in the TS bases.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

**Local Public Document Room**  
location: Athens Public Library, South Street, Athens, Alabama 35611.

**Attorney for licensee:** General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

**NRC Assistant Director:** Suzanne Black

Virginia Electric and Power Company,  
Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

**Date of amendment request:** July 24, 1989

**Description of amendment request:** The proposed change would modify the Administrative Controls Section of the Technical Specifications (TS) which identifies the membership composition of the Station Nuclear Safety and Operating Committee (SNSOC) by adding the Superintendent-Engineering to the list of members.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed change in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve significant hazards considerations in that it would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated, because the [change reflects] administrative considerations and [does] not change the plant design or operation. Presently, provisions made in the Technical Specifications for the appointment of alternate members to the SNSOC may be utilized with regard to the Superintendent-Engineering. The proposed change merely allows the augmentation of the pool of members readily available to convene meetings of the SNSOC; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated, because, as above, plant design or operation is not affected by [the] proposed [change], or

(3) Involve a significant reduction in a margin of safety, because neither plant design or operation is affected. [The] proposed [change does] not alter the function, alternates, meeting frequency, quorum, responsibilities, authority, or records of the SNSOC as defined by the Administrative Controls of the Technical Specifications.

Based on the staff's review of the licensee's evaluation, the staff agrees with the licensee's conclusions as stated above. Therefore, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

**Local Public Document Room**  
location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

**Attorney for licensee:** Michael W. Maupin, Esq., Hutton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

**NRC Project Director:** Herbert N. Berkow Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

**Date of amendment request:** June 15, 1989

**Description of amendment request:** The licensee has completed the installation of a wide range neutron flux monitoring system as required by license condition 2.C.(16) Attachment 2, Item 3(b). The amendment request is to put the operability requirement for this wide range flux monitoring system into Technical Specification Table 3.3.7.5-1, "Accident Monitoring Instrumentation." Surveillance requirements for the wide range monitor would be put into Table 4.3.7.5-1, "Accident Monitoring Instrumentation Surveillance Requirements." Under accident conditions the wide range monitoring system will replace three other neutron flux monitoring systems. Requirements for the average power range monitor (APRM), the intermediate range monitor (IRM), and the source range monitor (SRM) would be removed from these two tables.

The licensee has also requested a change to the Action Statement to be implemented in the event of inoperability of the wide range flux monitoring system. The current action statement to be applied when the neutron flux monitors are inoperable would require repair or shutdown within a specified time. The proposed action statement would allow use of an alternate sampling method instead of shutdown in the event of inoperability of the wide range system. The alternate sampling method would utilize the APRM, the IRM, and the SRM.

By letter dated November 18, 1986 the licensee notified the NRC that the installation of the wide range monitoring system would take place during the 1987 refueling outage and requested that the technical specifications be revised to incorporate the requirements for this new system. Notice of consideration of issuance of this amendment was published in the Federal Register on April 8, 1987 (52 FR 11377). The licensee experienced a number of difficulties in demonstrating the environmental qualifications of the system and asked to defer action on the November 1986 request. Because of the significant lapse in time, on May 17, 1989 the NRC notified the licensee that the November 18, 1986 request was being denied. Subsequently the licensee resolved the environmental qualification problems.

The June 15, 1989 amendment request seeks the exact changes sought in the November 18, 1986 request. The licensee declared that the statements made in the 1986 letter are still accurate and applicable including their arguments supporting the determination of no significant hazards. Therefore, the November 18, 1986 letter will be



considered as part of the amendment request.

**Basis for Proposed No Significant Hazards Consideration Determination:**

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has determined and the staff agrees, that the requested amendment per 10 CFR 50.92 does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the equipment installed will not provide input to any safety systems relied upon in the licensing bases accident analyses. The change in action statements does not significantly increase the probability or consequences of an accident previously evaluated because the redundant APRM, IRM, and SRM monitors presently in use will be available should the wide range monitors be declared inoperable.

(2) Create the possibility of a new or different kind of accident than previously evaluated because the equipment provides monitoring only and merely provides another display that indicates neutron flux or power levels in addition to the existing devices currently relied upon. The change in action statements does not create the possibility of a new or different kind of accident because the equipment provides a monitoring function only and has adequate redundancy with the existing APRM, IRM, and SRM monitors so that no new or different kind of accident is credible.

(3) Involve a significant reduction in a margin of safety because no safety margins are affected. This wide range monitoring equipment provides a passive monitoring function only and is not part of any plant safety related system, thus safety margins will not be affected. The change in action statements does not involve a significant reduction in margin of safety because the existing redundant monitors provide adequate backup given the remote possibility that both wide range monitors become inoperable.

Based on the above considerations the Commission proposes to determine that

the requested change to the WNP-2 Technical Specifications involves no significant hazards considerations.

**Local Public Document Room location:** Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

**Attorneys for licensees:** Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

**NRC Project Director:** George W. Knighton

**Yankee-Rowe Nuclear Power Corporation, Docket No. 50-029, Yankee-Rowe Nuclear Power Station, Bolton, Massachusetts**

**Date of amendment request:** July 24, 1989

**Description of amendment request:** The proposed amendment consists of two proposed changes: (1) The proposed amendment modifies Table 3.2-1 of Technical Specification 3.2.4 to substitute a limit on the operating loop average temperature for the current limit on cold leg temperature. The proposed average temperature limit will allow greater operational flexibility during part-load operation and will maintain DNB margins to be bounded by full power conditions. (2) The proposed amendment removes the word "Exxon" from the last paragraph of Technical Specification Base 3/4.2.4.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following for the first proposed change:

(1) An increase in temperature will not increase the probability of an accident. The main steam line break is the only licensing analysis affected by the change. The reanalysis of this event has shown that the consequences remain acceptable. Therefore,

there is not a significant increase in the probability or consequences of a previously analyzed event.

(2) An increase in temperature will not result in a new failure mechanism which could initiate an accident. Therefore, the proposed change will not create the possibility of a new or different type of accident from any previously analyzed.

(3) The steady-state DNBR margin has been evaluated at part-load conditions with the increased cold leg temperatures allowed by this change. The DNB performance at reduced load is bounded by the limiting full power condition. The transient licensing analyses were also evaluated, with the main steam line break being the only affected event. Reanalysis of this transient has shown that the results will remain acceptable. Therefore, this change will not result in a significant decrease in safety margins.

For the second proposed change: This change is editorial in nature and would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore determines that the proposed amendment does not involve a significant hazards consideration.

**Local Public Document Room location:** Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

**Attorney for Licensee:** John A. Ritscher, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

**NRC Project Director:** Richard H. Wessman

**PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and



page cited. This notice does not extend the notice period of the original notice.

**Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of amendment request:* August 26, 1988

*Brief description of amendment request:* This amendment revises the Technical Specification Limiting Conditions for Operations (LCO) and Surveillance Requirements (SRs) for the Containment Cooling System (CCS) in TS 3/4.5.B and would revise related requirements for diesel generator (DG) testing in TS 3/4.5.F and the associated Bases.

*Date of publication of individual notice in Federal Register:* July 28, 1989 (54 FR 31395)

*Expiration date of individual notice:* August 28, 1989

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of amendment request:* July 12, 1989, as supplemented July 26, 1989

*Brief description of amendment request:* The proposed amendments would revise the North Anna Units 1 and 2 Technical Specifications by revising the definition of slave relay testing and by clarifying the test requirements for Engineered Safeguards Features (ESF) slave relays.

*Date of publication of individual notice in Federal Register:* August 9, 1989 (54 FR 32729)

*Expiration date of individual notice:* September 8, 1989

*Local Public Document Room location:* The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

#### NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act

of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

**Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois; Docket Nos. 50-456 and 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois**

*Date of application for amendments:* May 22, 1989

*Brief description of amendments:* These amendments modify Technical Specification 5.3.2 to allow the use of hafnium, or silver-indium-cadmium, or a combination of both, as the absorber material in the rod control cluster assemblies.

*Date of issuance:* July 17, 1989

*Effective date:* July 17, 1989

*Amendment Nos.:* 30 for Byron and 19 for Braidwood

*Facility Operating License Nos. NPF-37, NPF-66, NPF-72, and NPF-77.* The amendments revised the Technical Specification.

*Date of initial notice in Federal Register:* June 28, 1989 (54 FR 27224). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* For Byron Station, the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

**Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois**

*Date of application for amendment:* June 13, 1989

*Brief description of amendment:* These amendments modify Sections 4.0.3 and 4.0.4, General Surveillance Requirements, of the Technical Specifications for Zion Station. In addition Section 3.3.1.F, Relief Valves, is revised to include exception to General Limiting Condition 3.0.4.

*Date of issuance:* August 1, 1989

*Effective date:* August 1, 1989

*Amendments Nos.:* 117, 106

*Facility Operating License No. DPR-39.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 28, 1989 (54 FR 27225). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan**

*Date of application for amendment:* February 6, 1987 as supplemented November 2, 1987.

*Brief description of amendment:* This amendment modifies paragraph 2.C.(5) of the license to require compliance with the amended for a "call-in" program for off-duty guards from their residences. This Plan was amended to conform to the requirements of 10 CFR 73.55.

*Date of issuance:* July 28, 1989

*Effective date:* July 28, 1989

*Amendment No.:* 98



**Facility Operating License No. DPR-6.** The amendment revises the Technical Specifications.

**Date of initial notice in Federal Register:** October 19, 1988 (53 FR 40983). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1989.

*No significant hazards consideration comments received:* No.

**Local Public Document Room**  
location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

**Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan**

**Date of application for amendment:** May 25, 1989 and supplemented on June 30, 1989

**Brief description of amendment:** This amendment revises Section 3.7(d), (e) and (f) to depict the requirements of 10 CFR Part 50, Appendix J and NUREG-0123, Standard Technical Specifications for General Electric Boiling Water Reactors and to remove the 24 hour duration requirement to reduce the impact of diurnal effects by using an NRC approved "Total Time" or Point-to-Point method described in ANSI N45.4-1972 and Bechtel Topical Report BN-TOP-1, Rev. 1.

**Date of issuance:** July 31, 1989

**Effective date:** July 31, 1989

**Amendment No.:** 99

**Facility Operating License No. DPR-6.** The amendment revises the Technical Specifications.

**Date of initial notice in Federal Register:** June 28, 1989 (54 FR 27227). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1989.

*No significant hazards consideration comments received:* No.

**Local Public Document Room**  
location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

**Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania**

**Date of application for amendment:** August 11, 1988

**Brief description of amendment:** The amendment revises the supplemental leak collection and release system (SLCRS) flow rate from 59,000 cfm to 57,000 cfm, reflecting an approved change to the design basis of the SLCRS. This is a partial response to the licensee's application.

**Date of issuance:** August 2, 1989

**Effective date:** August 2, 1989

**Amendment No.:** 19

**Facility Operating License No. NPF-73.** Amendment revised the Technical Specifications.

**Date of initial notice in Federal Register:** October 5, 1988 (53 FR 39168). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1989.

*No significant hazards consideration comments received:* No.

**Local Public Document Room**  
location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia**

**Date of application for amendments:** April 5, 1989

**Brief description of amendments:** The amendments modified the Technical Specifications to delete footnotes that are no longer applicable.

**Date of issuance:** August 8, 1989

**Effective date:** August 8, 1989

**Amendment Nos.:** 21 and 2

**Facility Operating License Nos. NPF-68 and NPF-81:** Amendments revised the Technical Specifications.

**Date of initial notice in Federal Register:** May 17, 1989 (54 FR 21308). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 8, 1989.

*No significant hazards consideration comments received:* No.

**Local Public Document Room**  
location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia**

**Date of application for amendments:** April 6, 1989

**Brief description of amendments:** The amendments modified Technical Specification 4.5.2.h.1)b) to increase for Unit 1 the maximum total charging pump flow rate with a single pump running.

**Date of issuance:** August 8, 1989

**Effective date:** August 8, 1989

**Amendment Nos.:** 22 and 3

**Facility Operating License Nos. NPF-68 and NPF-81:** Amendments revised the Technical Specifications.

**Date of initial notice in Federal Register:** May 31, 1989 (54 FR 23314). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 8, 1989.

*No significant hazards consideration comments received:* No.

**Local Public Document Room**  
location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

**Date of amendment request:** June 1, 1989

**Brief description of amendments:** The proposed changes allow the use of both hafnium (Hf) and silver-indium-cadmium (Ag-In-Cd) design Rod Cluster Control Assemblies (RCCA) within the core.

**Date of issuance:** July 31, 1989

**Effective date:** July 31, 1989

**Amendment Nos.:** 10 and 2

**Facility Operating License Nos. NPF-76 and NPF-80.** Amendment revised the Technical Specifications.

**Date of initial notice in Federal Register:** June 28, 1989 (54 FR 27229). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 1989.

*No significant hazards consideration comments received:* No.

**Local Public Document Rooms**  
Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

**Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois**

**Date of application for amendment:** May 18, 1988

**Description of amendment request:** The change revised the setpoint requirement for the control rod scram accumulator low pressure alarm.

**Date of issuance:** August 4, 1989

**Effective date:** August 4, 1989

**Amendment No.:** 24

**Facility Operating License No. NPF-62.** The amendment revised the Technical Specifications.

**Date of initial notice in Federal Register:** December 14, 1988 (53 FR 50330). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1989.

*No significant hazards consideration comments received:* No.

**Local Public Document Room**  
location: The Vespasian Warner Public



Library, 120 West Johnson Street,  
Clinton, Illinois 61727.

Iowa Electric Light and Power Company,  
Docket No. 50-331, Duane Arnold  
Energy Center, Linn County, Iowa

*Date of application for amendment:*  
April 14, 1989

*Brief description of amendment:* The amendment revised the Duane Arnold Energy Center (DAEC) Facility Operating License No. DPR-49, extending the DAEC Integrated Plan for 2 years beyond the current expiration date of May 3, 1989.

*Date of issuance:* August 8, 1989

*Effective date:* August 8, 1989

*Amendment No.:* 161

*Facility Operating License No. DPR-49.* Amendment revised the license.

*Date of initial notice in Federal Register:* June 28, 1989 (54 FR 27231). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

*Date of application for amendment:*  
May 27, 1988

*Brief description of amendment:* The amendment corrects several editorial, typographical, and other minor errors.

*Date of issuance:* July 19, 1989

*Effective date:* July 19, 1989

*Amendment No.:* 134

*Facility Operating License No. DPR-59.* Amendment revised the Technical Specification.

*Date of initial notice in Federal Register:* April 19, 1989 (54 FR 15835). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 19, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

*Date of application for amendment:*  
May 5, 1989

*Brief description of amendment:* The amendment request increases the Technical Specification channel functional test surveillance intervals for

various Control Rod Block instrumentation in accordance with General Electric Company Licensing Topical Report NEDC-30851P-A, Supplement 1.

*Date of issuance:* July 28, 1989

*Effective date:* July 28, 1989 and shall be implemented within 60 days of issuance.

*Amendment No. 29*

*Facility Operating License No. NPF-57.* This amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 14, 1989 (54 FR 25376). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

*Date of application for amendments:* July 15, 1988 and supplemented by letters dated April 25, 1989 and May 24, 1989.

*Brief description of amendments:* These amendments deleted the organization charts, Figures 6.2-1 and 6.2-2 and replaced them with more general organizational requirements.

*Date of issuance:* July 31, 1989

*Effective date:* Units 1 and 2, as of the date of issuance to be implemented within 45 days of the date of issuance.

*Amendment Nos. 99 and 76*

*Facility Operating License Nos. DPR-70 and DPR-75.* These amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* May 31, 1989 (54 FR 23322). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

*Date of application for amendment:*  
August 24, 1988

*Brief description of amendment:* The amendment modifies the value for the average electrotape temperature and the average battery capacity.

*Date of issuance:* August 7, 1989

*Effective date:* August 7, 1989

*Amendment No.:* 80

*Facility Operating License No. NPF-12.* Amendment revises the Technical Specifications.

*Date of initial notice in Federal Register:* May 3, 1989 (54 FR 18959). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 1989

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

*Date of application for amendment:*  
May 22, 1989

*Brief description of amendment:* This Amendment allows, in the case of a missed surveillance requirement, delaying compliance with the Action Statement for a period up to 24 hours to permit the completion of the surveillance when the allowed outage time limits of the Action Statement are less than 24 hours and establishes as the starting time of the noncompliance that time when it is discovered that the Surveillance Requirement has not been performed. This Amendment also permits passage through or to Operational Conditions as required in order to comply with the Action Statements.

*Date of issuance:* August 8, 1989

*Effective date:* August 8, 1989

*Amendment No.:* 81

*Facility Operating License No. NPF-12.* Amendment revises the Technical Specifications.

*Date of initial notice in Federal Register:* July 12, 1989 (54 FR 29411). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1989. The amendment was inadvertently issued before expiration of the comment period. However, no comments or requests for hearing were received within the period for such comments or requests.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.



**Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of application for amendments:* January 13, 1989 (TS 256)

*Brief description of amendments:* The proposed changes would delete certain surveillance testing requirements on redundant but independent systems when a system is declared inoperable and a requirement to verify alignment of valves in the injection/safety related flow paths.

*Date of issuance:* August 2, 1989

*Effective date:* August 2, 1989

*Amendments Nos.:* 169, 169, 140

*Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* May 17, 1989 (54 FR 21316). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room*

*location:* Athens Public Library, South Street, Athens, Alabama 35611.

**Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of application for amendments:* May 15, 1989 (TS 270)

*Brief description of amendments:* This amendment corrects Technical Specification Surveillance Requirement 4.6.A.3 to comply with 10 CFR 50, Appendix H and revises the Bases section to reflect the specimen withdrawal program agreed upon by TVA and the NRC.

*Date of issuance:* August 3, 1989

*Effective date:* August 3, 1989

*Amendments Nos.:* 170, 170, 141

*Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 14, 1989 (54 FR 25379). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room*

*location:* Athens Public Library, South Street, Athens, Alabama 35611.

**Tennessee Valley Authority Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* March 27, 1989 (TS 88-27)

*Brief description of amendments:* The amendments revise the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications. The changes increase the base current value for the containment air return fans, in Surveillance Requirement 4.6.5.6, from 28 amperes to 32 amperes. The band for an acceptable current (i.e., 277.5 amperes) is not being changed.

*Date of issuance:* July 31, 1989

*Effective date:* July 31, 1989

*Amendment Nos.:* 121, 110

*Facility Operating Licenses Nos. DPR-77 and DPR-79:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* April 19, 1989 (54 FR 15838). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room*

*location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* December 22, 1988 (TS 88-34)

*Brief description of amendments:* The amendments modify the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications (TS). The changes remove inappropriate testing requirements associated with the auxiliary building gas treatment system (ABGTS) and add a new requirement on the automatic isolation of the auxiliary building ventilation exhaust. Surveillance requirements for ABGTS activation exist in Section 7, "Plant Systems," and Section 9, "Refueling Operations," of the TS. The ABGTS test requirement associated with the auxiliary building ventilation monitoring system (ABVMS) was deleted from both Section 7 and Section 9. The ABGTS test requirement associated with a Phase A containment isolation signal was deleted from Section 9 but remains in Section 7. The ABGTS test requirement associated with the high radiation signal from the spent fuel pool monitors was deleted from Section 7 but remains in Section 9. A new requirement was added to Table 4.3.9 of Specification 3.3.3.10, "Radioactive Gaseous Effluent

Monitoring," to demonstrate automatic isolation of the auxiliary building ventilation exhaust any time the ABVMS (radiation monitor) indicates measured levels above the alarm/trip setpoint. The requirement was in Sections 7 and 9 as part of the ABGTS actuation test for a high radiation signal from the ABVMS but was deleted. Also, two typographical errors in the Unit 1 Specification 3.3.3.10 have been corrected.

*Date of issuance:* August 3, 1989

*Effective date:* August 3, 1989

*Amendment Nos.:* 122, 111

*Facility Operating Licenses Nos. DPR-77 and DPR-79:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* February 8, 1989 (54 FR 6212). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room*

*location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio**

*Date of application for amendment:* January 15, 1988

*Brief description of amendment:* This amendment deleted Sections 3/4.3.3.7, Chlorine Detection Systems, from Appendix A, Technical Specifications, and Section 3/4.3.3.7 from the Bases. The index in Appendix A has also been updated to reflect this deletion.

*Date of issuance:* August 4, 1989

*Effective date:* August 4, 1989

*Amendment No.:* 134

*Facility Operating License No. NPF-3:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 28, 1989 (54 FR 27241). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room*

*location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.



**Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio**

*Date of applications for amendment:* November 2, 1987; January 5, 1989

*Brief description of amendment:* This amendment corrects typographical errors and makes minor word changes to achieve consistency between the Technical Specifications and plant nomenclature. It also deletes certain statements that are no longer necessary because of elapsed time and/or completion of specified actions.

*Date of issuance:* August 4, 1989

*Effective date:* August 4, 1989

*Amendment No. 135*

*Facility Operating License No. NPF-3.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* May 17, 1989 (54 FR 21317). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

**Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of application for amendments:* May 23, 1989

*Brief description of amendments:* The amendments reduce the NA-1&2 TS 3/4.2.5 limit on the minimum measured flow rate in the reactor coolant system from 289,200 gallons per minute (gpm) to 284,000 gpm. This reduction in the minimum flow rate is enveloped within the NA-1&2 UFSAR Chapter 15 accident analyses.

*Date of issuance:* July 31, 1989

*Effective date:* July 31, 1989

*Amendment Nos.: 120 and 104*

*Facility Operating License Nos. NPF-4 and NPF-7.* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 28, 1989 (54 FR 27244). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

**Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of application for amendments:* June 8, 1989

*Brief description of amendments:* The amendments revise TS 3.3.3.5, Table 3.3-9, which addresses the auxiliary shutdown panel monitoring instrumentation. The measurement range of the charging flow instrumentation is changed from 0-150 gpm to 0-180 gpm, and the format of Table 3.3-9 and Table 4.3-6 is changed from horizontal to vertical.

*Date of issuance:* August 2, 1989

*Effective date:* August 2, 1989

*Amendment Nos.: 121 and 105*

*Facility Operating License Nos. NPF-4 and NPF-7.* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 28, 1989 (54 FR 27244). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

**Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of application for amendments:* March 28, 1989

*Brief description of amendments:* The amendments revise the TS Table 3.3-6 which specifies the operability requirements for radiation monitors. The change is in conformance with the NRC guidance provided in Generic Letter No. 83-37, dated November 1, 1983.

*Date of issuance:* August 2, 1989

*Effective date:* August 2, 1989

*Amendment Nos.: 122 and 106*

*Facility Operating License Nos. NPF-4 and NPF-7.* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* May 3, 1989 (54 FR 18962). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.**

*Date of application for amendments:* August 5, 1988, as supplemented January 25, 1989.

*Brief description of amendments:* These amendments revise the requirements governing the operability of the Individual Rod Position Indicating System (IRPIS). The changes involve shifting the emphasis from the IRPIS to the demand position indicating system (the step counters) for rod group position information during shutdown and certain transient operational modes such as reactor startup.

*Date of issuance:* August 2, 1989

*Effective date:* August 2, 1989

*Amendment Nos. 131 and 131*

*Facility Operating License Nos. DPR-32 and DPR-37.* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* February 22, 1989 (54 FR 7647). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185

**Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

*Date of application for amendments:* March 17, 1989.

*Brief description of amendments:* The Technical Specification 15.2.3.1.B(5) is revised to eliminate the f-delta-I function from the Overpower Delta T (OPDT) setpoint to increase the flexibility of operation at full power by allowing use of the full flux difference operating envelope.

*Date of issuance:* July 31, 1989

*Effective date:* July 31, 1989

*Amendment Nos.: 123 and 126*

*Facility Operating License Nos. DPR-24 and DPR-27.* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* May 17, 1989 (54 FR 21318). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Joseph P. Mann Library, 1516



Sixteenth Street, Two Rivers, Wisconsin.

**Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* March 28, 1988

*Brief description of amendment:* The current Wolf Creek Technical Specifications did not identify actions to be taken if either the measured overall integrated containment leakage rate or the measured combined leakage rate for all penetrations and valves subject to Type B and C tests exceed allowable limits when the reactor coolant system temperature is above 200° F. The amendment introduced Action statements to be taken if local leak rate testing, performed at power, exceeds allowable limits.

*Date of Issuance:* August 9, 1989

*Effective date:* August 9, 1989

*Amendment No.:* 33

*Facility Operating License No. NPF-42.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 24, 1988 (53 FR 32301). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room*

*Location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

**NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date

the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant

to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By September 22, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's



property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and

telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York**

*Date of application for amendment:* August 3, 1989.

*Brief description of amendment:* The amendment raises the maximum allowed service water system inlet water temperature from 85° F to 90° F and raises the allowable containment air temperature from 120° F to 130° F.

*Date of issuance:* August 7, 1989

*Effective date:* August 7, 1989

*Amendment No.:* 143

*Facility Operating License No. DPR-26:* Amendment revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration:* No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 7, 1989.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

**Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York**

*Date of application for amendment:* August 4, 1989

*Brief description of amendment:* The amendment revises Technical Specification 3 to permit the plant to operate with a service water temperature above 90° F with containment air temperatures up to 130° F for up to seven hours before reaching the hot shutdown condition via normal operation procedures.

*Date of issuance:* August 11, 1989

*Effective date:* August 11, 1989

*Amendment No.:* 87

*Facility Operating License No. DPR-64:* Amendment revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration:* No. The Commission's related evaluation of the amendment, consultation with the State, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 11, 1989.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

Dated at Rockville, Maryland, this 16th day of August, 1989.

For the Nuclear Regulatory Commission  
Steven A. Varga,

Director, Division of Reactor Projects-I/II,  
Office of Nuclear Reactor Regulation  
[Doc. 89-14729 Filed 8-22-89; 8:45 am]

BILLING CODE 7590-01-D

### **Generic Letter (GL) 89-10, Safety-Related Motor-Operated Valve Testing and Surveillance; Meeting**

**SUMMARY:** The United States Nuclear Regulatory Commission (USNRC) is planning to hold three public meetings to discuss Generic Letter (GL) 89-10, "Safety-Related Motor-Operated Valve Testing and Surveillance." The purpose of these meetings is to discuss the guidance contained in Generic Letter 89-10 with operators of commercial nuclear power plants and near term operating license applicants of nuclear power plants. The NRC staff plans to make a brief presentation on the contents of the Generic Letter at each meeting. However, the main focus of these meetings will be to discuss questions received from licensees and applicants.

**DATE AND LOCATION:** These meetings will be held from 10:00 a.m.-5:00 p.m. on the following dates at the following locations:

*September 18, 1989:* O'Hare Marriott, 8535 West Higgins Road, Chicago, IL 60631, (312) 693-4444.

*September 20, 1989:* Registry Hotel, 3203 Quebec Street, Denver, CO 80207, (303) 321-3333.

*September 26, 1989:* Holiday Inn Crown Plaza, 1750 Rockville Pike, Rockville, MD 20852, (301) 468-1100.

**FOR FURTHER INFORMATION CONTACT:** Thierry M. Ross, U. S. Nuclear Regulatory Commission, Office of



Nuclear Reactor Regulation, Washington, D.C. 20555. Telephone (301) 492-3016.

**SUPPLEMENTARY INFORMATION:** These meetings are intended to be workshops where technical personnel from nuclear power plants or utility corporate offices may obtain information on expected responses to the Generic Letter. In order to assist NRC staff in preparing for these meetings, individuals planning to attend are requested to forward questions on the Generic Letter to their respective NRC Project Manager and to indicate the particular meeting they will attend. As time permits, additional questions will be solicited from the audience. Opportunities will be provided for the public to ask questions although priority will be given to nuclear utility personnel.

Dated at Rockville, Maryland this 16th day of August 1989.

For the Nuclear Regulatory Commission,  
**Thierry M. Ross,**

*Project Manager, Project Directorate III-2, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-19827 Filed 8-22-89; 8:45 am]

BILLING CODE 7590-01-M

#### **Advisory Committee on Reactor Safeguards; Meeting Agenda**

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 7-9, 1989 in Room P-110, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the Federal Register on July 26, 1989.

*Thursday, September 7, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.*

**8:30 a.m.-8:45 a.m.: Comments by ACRS Chairman**—The ACRS Chairman will report on items of current interest.

**8:45 a.m.-12:00 Noon: Maintenance of Nuclear Power Plants (Open)**—The Committee will review and report on the proposed NRC policy statement and an associated draft regulatory guide related to maintenance programs at nuclear power plants.

**1:00 p.m.-1:45 p.m.: Severe Accident Risks (NUREG-1150) (Open)**—The Committee will meet with the NRC staff representatives to discuss the NRC staff's resolution of ACRS comments included in its report of May 9, 1989 regarding proposed use of NUREG-1150, Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants.

**1:45 p.m.-4:15 p.m.: Individual Plant Examination for External Events**

**(IPEEE) (Open)**—A briefing and discussion with representatives of the NRC staff and the nuclear industry will be held regarding the status of the IPEEE program.

**4:30 p.m.-5:30 p.m.: Industrial Sabotage (Open/Closed)**—The Committee will review and report on a proposed resolution of Generic Issue A-29, Nuclear Power Plant Design for Reduction of Vulnerability to Industrial Sabotage.

Portions of this session will be closed as necessary to discuss information related to security provisions at nuclear power plants.

**5:30 p.m.-6:15 p.m. Accident Severity Scale (Open)**—A briefing and discussion regarding proposed accident severity scale for use in the public announcement of nuclear power plant events and accidents will be held.

*Friday, September 8, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.*

**8:30 a.m.-11:30 a.m.: Seabrook Nuclear Power Station, Unit 1 (Open)**—

The Committee will review and report on the proposed off-site emergency preparedness for full power operation of the Seabrook nuclear power plant.

**11:30 a.m.-12:00 Noon: Future ACRS Activities (Open)**—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

**1:00 p.m.-3:00 p.m. and 3:15 p.m.-4:15 p.m.: EPRI Requirements for Advanced Light Water Reactors (Open)**—A briefing and discussion will be held regarding the status of the NRC review of the proposed EPRI Requirements for Advanced LWRs.

**4:15 p.m.-5:15 p.m.: Improved RHR Capability for Residual Heat Removal Capability in LWRs (Open)**

A briefing and discussion will be held regarding the NRC staff evaluation of the implementation of requirements pursuant to the NRC generic letter regarding this matter, including, in particular, the strictures pertaining to containment closure.

**5:15 p.m.-5:45 p.m.: Advance Pressurized Water Reactors (Open)**—A briefing and discussion will be held regarding the status of the NRC staff review of Westinghouse and Combustion Engineering standardized nuclear power plants.

**5:45 p.m.-6:30 p.m.: Preparation of ACRS Reports to NRC (Open)**—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

*Saturday, September 9, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.*

**8:30 a.m.-9:15 a.m.: Appointment of ACRS Members (Open/Closed)**—The Committee will discuss qualifications of candidates proposed for nomination as ACRS Members.

Portions of this session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

**9:15 a.m.-12:00 Noon: Preparation of ACRS Reports to NRC (Open)**—The Committee will continue the discussion of the proposed ACRS reports to NRC regarding items considered during this meeting.

**1:00 p.m.-1:45 p.m.: Subcommittee Activities (Open)**—The Committee will discuss the status of assigned ACRS subcommittee activities, including activities of NRC regional offices.

**1:45 p.m.-2:30 p.m. Miscellaneous (Open)**—The Committee will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would



represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(c)(6)) and Safeguards/Security Information applicable to specific nuclear facilities (5 U.S.C. 552b(c)(3)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling or requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8:15 a.m. and 5:00 p.m.

Dated: August 21, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-20012 Filed 8-22-89; 9:11 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

[New, Form 5, File No. 270-323; Rev., Form 4, File No. 270-125, Rev., Form 3, File No. 270-126]

### Forms Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash, (202) 272-2142

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval amendments to Forms 3 and 4, as well as a new Form 5, which will restructure the manner in which transactions and holdings by persons subject to section 16 of the Securities Exchange Act of 1934 are reported. The amendments should reduce the number of filings on each form. With respect to Form 3, the Commission estimates that approximately 9,656 respondents would be effected at an estimated one-half burden hour per response. Form 4 would be filed by 69,162 persons annually at an estimated one-half burden hour per response. Form 5 would be filed by 40,500 persons at one burden hour per response. The estimated average burden hour are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of the Commission's rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy

of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0104, 0287, and 0362), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 17, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-19850 Filed 8-22-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-19572]

### Application and Opportunity for Hearing; Delta Air Lines, Inc.

August 17, 1989.

Notice is hereby given that Delta Air Lines, Inc. (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (hereinafter referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citizens and Southern Trust Company (Georgia), National Association (the "Bank") under ten indentures (the "1989 Indentures") to be qualified under the Act relating to the 1989 Equipment Trust Certificates, Series A through J, under seven indentures dated October 25, 1988 (the "1988 Indentures") that were qualified under the Act relating to 1988 Equipment Trust Certificates, Series A through G, and under an indenture dated January 1, 1988 (the "Other Indenture") that was not qualified under the Act because the securities were exempt from registration under the Securities Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the 1988 Indentures, the Company has issued \$253,471,000 aggregate principal amount of 1988 Equipment Trust Certificates, Series A through G, (the "1988 Certificates") and pursuant to the Other Indenture, the Company has outstanding \$44,900,000 aggregate principal amount of its Development Authority of Clayton County Special Facilities Adjustable Tender Revenue Refunding Bonds, Series 1988 (Delta Air Lines, Inc. Project) (the "Bonds"). The 1988 Certificates were registered under the Securities Act of 1933 (the "1933 Act") and the 1988 Indentures were qualified under the Act. The Bonds were exempt from registration and the Other Indenture was not qualified under the Act.

(2) Pursuant to the 1989 Indentures, the Company will issue \$285,963,000 aggregate principal amount of its Equipment Trust Certificates, Series A through J (the "1989 Certificates"). The 1989 Certificates will be registered under the 1933 Act and the 1989 Indentures will be qualified under the Act.

(3) The Company is not in default under the 1988 Indentures or the Other Indenture. The Company's obligations under the 1989 Indentures, the 1988 Indentures and the Other Indenture are general, wholly unsecured obligations and rank *pari passu inter se*. Each of the 1988 Indentures and 1989 Indenture is separately collateralized by a security interest in different aircraft and the lease relating thereto. The Other Indenture is secured by payments made pursuant to a Loan Agreement and Promissory Note.

(4) The provisions of the 1988 Indentures, the Other Indenture and the 1989 Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under said Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter. For a more detailed statement of the matters of fact and law asserted, all persons are referred to as said application which is on file in the Office of the Commission's Public Reference Section, File Number 22-19572, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, no later than September 10, 1989 request in writing that a hearing be held on such matter stating the nature of his interest, the



reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 89-19844 Filed 8-22-89; 8:45 am]

BILLING CODE 9010-01-M

[Rel. No. 35-24941]

#### Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 17, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 11, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### QMT Holding Company, Inc. (70-7274)

QMT Holding Company, Inc., ("QMT"), an Illinois corporation, 807 East Adams Street, Springfield, Illinois 62739, has filed an application and amendments thereto pursuant to sections 3(a)(1), 9(a)(2), and 10 of the Act. The latest amendment was filed on May 24, 1989. A notice in this matter was previously issued on September 11, 1986 (HCAR No. 24189).

QMT requests an order of the Commission (1) approving QMT's proposed acquisition of all of the outstanding shares of common stock of Central Illinois Public Service Company ("CIPS"), an Illinois corporation, and the indirect acquisition of 20% of the outstanding shares of capital stock of Electric Energy, Inc. ("EEI"), also an Illinois corporation, through CIPS' ownership of these shares, and (2) granting QMT and its subsidiary companies, upon consummation of the proposed transaction, an exemption under section 3(a)(1) of the Act from all provisions of the Act except section 9(a)(2).

QMT was incorporated by CIPS on July 11, 1986, for the purpose of acquiring all of CIPS' common stock. QMT proposes to acquire all of CIPS' common stock by exchanging shares of its authorized common stock for all of the currently outstanding shares of CIPS common stock ("Stock Exchange"). QMT currently owns no utility assets and is not a holding company under the Act. QMT states that the purpose of the reorganization is to provide the flexibility and capability to make investments in other business ventures.

CIPS is a public-utility company and an exempt holding company by reason of filing exemption statements pursuant to rule 2 under the Act. It is principally engaged in the generation, transmission, distribution, and sale of electricity in central and southern Illinois to approximately 306,000 customers in 550 communities and adjacent suburban and rural areas. CIPS also furnishes natural gas service to approximately 157,000 Illinois customers in 257 communities and adjacent suburban and rural areas. CIPS' total operating revenues for 1988 were \$616,188,000, of which \$499,486,000 (81%) was from electric service and \$116,702,000 (18%) was from gas service. CIPS does not provide electric or gas service outside of Illinois. As of December 31, 1988, CIPS had outstanding 34,171,873 shares of its common stock, no par value. CIPS also had 920,000 shares of preferred stock, \$100 par value, outstanding as of this date.

CIPS owns 20% of the capital stock of EEI, which owns a 1,000 MW generating station at Joppa, Illinois. EEI was organized in 1950 by CIPS and several other public-utility companies ("Sponsoring Companies") primarily to supply a substantial portion of the electric power requirements of a federal atomic energy installation ("Installation") at Paducah, Kentucky, now administered by the Department of Energy ("DOE"). The Commission, taking notice of the Installation's importance to national defense, approved CIPS' acquisition of the capital stock of EEI in *Central Illinois Public Service Co.*, 32 S.E.C. 202, 204 (1951), and *Electric Energy, Inc.*, 38 S.E.C. 658, 660 (1958). All of the electricity sold by EEI is purchased by DOE and the Sponsoring Companies, and those sales are EEI's only sources of revenue. EEI does not sell electricity to private consumers and does not have any equity securities outstanding in the hands of the public. EEI had outstanding at December 31, 1988, \$34,200,000 in short-term and long-term notes under two revolving credit agreements with banks.

CIPS' investment of \$2,042,561 in its 20% interest in EEI is 0.12% of CIPS' total assets as of December 31, 1988. During the 12-month period ending December 31, 1988, CIPS received \$2,248,619 as its share of EEI's net income, which amounted to 2.6% of CIPS' net income for that period.

QMT and CIPS intend that, as a result of the Stock Exchange, QMT will own all the outstanding common stock of CIPS. CIPS will continue to own 20% of the capital stock of EEI. Holders of CIPS preferred stock and first mortgage bonds will continue as security holders of CIPS. CIPS intends to submit the Stock Exchange to its share holders for their approval.

The proposed Stock Exchange was approved by an initial order of the Illinois Commerce Commission ("ICC"), dated October 7, 1987; however, consideration of other issues, including the issue of "compensatory payments" to CIPS from nonutility affiliates, resulted in a reopening of the case. The ICC issued its final order, which approved the transaction, on April 26, 1989. QMT filed its latest amendment on May 24, 1989, following receipt of the ICC's final order. The Federal Energy Regulatory Commission issued an order approving the transaction under the Federal Power Act on November 30, 1988.

#### Ohio Power Company (70-7633)

Ohio Power Company ("Ohio Power"), 301 Cleveland Avenue, SW.,



Canton, Ohio 44702, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

Ohio Power proposes to issue and sell through December 31, 1990, up to \$100,000,000 aggregate principal amount of its First Mortgage Bonds ("Bonds"). The Bonds, which shall be offered from time to time in one or more series, will have maturities ranging from five to thirty years, with expected redemption protection for a period not to exceed 5 years. Interest rates and the price to be paid to Ohio Power for the Bonds will be determined by competitive bidding. If market conditions should not be propitious for the sale of the Bonds on a competitive bidding basis, Ohio Power proposes, subject to further authorization by the Commission, either to place the Bonds privately with institutional investors or to negotiate with underwriters for the sale of the Bonds.

Ohio Power states that the proceeds realized from the sale of the Bonds, together with any other funds which may become available to Ohio Power, will be used to refund Ohio Power's 12¾% Series First Mortgage Bonds due 2013 prior to their stated maturity (or to retire short-term indebtedness issued for such purpose), to repay other short-term indebtedness at or prior to maturity, to reimburse Ohio Power's treasury for expenditures incurred in connection with its construction program and for other corporate purposes.

#### Alabama Power Company (70-7673)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, a wholly owned subsidiary of The Southern Company, a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

Alabama proposes to sell to Chemical Waste Management, Inc. ("Chemical Waste") certain distribution facilities for a sale price of \$139,972.97. Alabama will obtain from its first mortgage bond Trustee a release of the Facilities from the lien of Alabama's first mortgage indenture.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19843 Filed 8-22-89; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

[Public Notice CM-8/1298]

### Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct a public meeting at 1000 on Monday, 11 September 1989 in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC in preparation for:

1. The upcoming 6th and final session of the International Maritime Organization (IMO)/United Nations Conference on Trade and Development (UNCTAD) Joint Intergovernmental Group of Experts (JIGE) on Maritime Liens and Mortgages (London, 25-29 September 1989);

2. The 61st session of the IMO Legal Committee (London, 28-29 September 1989); and

3. The anticipated 3rd session of the Intergovernmental Talks hosted by the United Kingdom on the question of liability and compensation related to maritime carriage of hazardous and noxious substances (HNS) (London, 21-22 September 1989).

By way of background concerning the IMO/UNCTAD JIGE, since 1986 this body has been considering possible changes in existing international treaties relating to maritime liens and mortgages and to vessel arrest. In view of progress to date, a new draft maritime liens and mortgages treaty will probably be finalized by this September.

Consequential revisions to the 1952 Convention on the Arrest of Seagoing Ships may also be developed.

On 20 June 1989, the U.S. submitted a position paper for the sixth JIGE session. In further preparation for the upcoming negotiating session, a final reading of both the latest draft of the new Maritime Liens and Mortgages Convention and the 1952 Arrest Convention will be conducted at the public meeting.

With respect to HNS liability and compensation, the IMO Legal Committee resumed work on this subject in 1987 in an effort to develop an international HNS regime which will prove more acceptable than that which was considered but not adopted at a 1984 Diplomatic Conference. It should be noted that implementation of an international HNS regime would have significant impacts on a wide range of U.S. interests related to the maritime and chemical industries, government and the environment.

Recent negotiating developments indicate a continuing strong international desire to expedite this

HNS work. In light of this desire, in addition to the anticipated intergovernmental talks, HNS liability and compensation may also be discussed at the IMO Legal Committee's two-day 61st session. U.S. positions concerning the preferred approach to development of the proposed new international HNS regime are currently being developed, and progress will be discussed at the 11 September 1989 public meeting.

The foregoing topics will be discussed extensively at the open SHC meeting. The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested.

Members of the public are invited to attend the 11 September 1989 SHC meeting, up to the seating capacity of the room.

For further information or to submit views concerning any of the topics to be discussed at the SHC meeting, contact either Captain Jonathan Collom or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G-LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267-1527, telefax (202) 267-4163.

Dated: August 14, 1989.

Thomas J. Wajda,  
Chairman, Shipping Coordinating Committee.  
[FR Doc. 89-19808 Filed 8-22-89; 8:45 am]  
BILLING CODE 4710-07-M

[Public Notice CM-8/1299]

### Shipping Coordinating Committee; 16th Session of Assembly and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC), will conduct an open meeting at 9:30 a.m. on Monday, October 2, 1989 in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. The purpose of the meeting is to finalize preparations for the 16th Session of Assembly and associated bodies of the International Maritime Organization (IMO), which is scheduled for October 9-20, 1989 at the IMO Headquarters in London. The purpose of the meeting is to discuss the papers received and the draft U. S. Positions for the 16th Session.

*Inter alia*, the items of particular interest are:

- Reports of the various Committees
- Reports on Diplomatic Conferences
- 28th Session Marine Environment Protection Committee (re: Amendment to Annex V; MARPOL 73/78)
- Report on the implementation of Resolution A.500 (XII)



- Approval of appointment of the new Secretary-General
- Work Programme and Budget
- Arrears of Contributions

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: CAPT M. C. Grace, U. S. Coast Guard (G-CI), 2100 Second Street SW, Washington, DC 20593 or by calling: (202) 267-2280.

Dated: August 11, 1989.

Thomas J. Wajda,  
Chairman, Shipping Coordinating Committee.  
[FR Doc. 89-19810 Filed 8-22-89; 8:45 am]  
BILLING CODE 4710-07-M

## Director General of the Foreign Service and Director of Personnel

[Public Notice 1124]

### State Department Performance Review Board Members

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95-454), the Executive Resources Board of the Department of State has appointed the following members to the State Department Performance Review Board register.

John P. Boright, Director, Office of Nuclear Technology and Safeguards  
Mark M. Lowenthal, Office Director, Office of Strategic Forces Analysis, Bureau of Intelligence and Research  
Michael J. Matheson, Deputy Legal Adviser, Office of the Legal Adviser  
Michele E. Truitt, Director, Office of Consular Fraud Prevention Programs  
Joyce Fleischman, Deputy Inspector General, Department of Interior  
Gene Richardson, Assistant Inspector General for Investigations, Agency for International Development  
Kenneth Hunter, Deputy Assistant Secretary for Personnel  
Gloria Gaston-Shapiro, Public Member

Dated: August 11, 1989.

Kenneth Hunter,  
Deputy Assistant Secretary for Personnel.  
[FR Doc. 89-19809 Filed 8-22-89; 8:45 am]  
BILLING CODE 4710-15-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Order 89-8-35; Docket 46343]

### Application of Ryan International Airlines, Inc. for a Fitness Redetermination

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not (1) find Ryan International Airlines, Inc., fit, willing, and able to resume interstate and overseas cargo air transportation, subject to conditions; and (2) reissue the carrier's sections 401 and 418 certificates of public convenience and necessity to reflect the change in name from PHH Air, Inc., to Ryan International Airlines, Inc.

**DATES:** Persons wishing to file objections should do so no later than September 1, 1989.

**ADDRESSES:** Objections and answers to objections should be filed in Docket 46343 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Delores King, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2343.

Dated: August 17, 1989.

Samuel W. Fairchild,  
Deputy Assistant Secretary for Policy and International Affairs.  
[FR Doc. 89-19765 Filed 8-22-89; 8:45 am]  
BILLING CODE 4910-52-M

## Federal Aviation Administration

### Aviation, Marine and Land Radionavigation Users Conference

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of conference.

**SUMMARY:** An Aviation, Marine and Land Radionavigation Users Conference will be conducted in Washington, DC on November 16 and 17, 1989. The purpose of the conference is to present to the users and suppliers of navigation equipment the opportunity to comment on current plans and policy for federally provided systems which satisfy aviation, marine, inland waterway and land radionavigation requirements.

Date, Time and Place: November 16 and 17, 1989 beginning 9:00 am each day at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia. November 16 will focus primarily on marine and land requirements. November 17 will focus primarily on aviation requirements.

Further Information: For aviation information contact Thomas H. Higgins,

Advanced Systems Design Service, Federal Aviation Administration, Department of Transportation (ADS-110), 800 Independence Avenue SW., Washington, DC 20591, (202) 267-9844. For marine and land information contact David C. Scull, Office of Research and Technology, Research and Special Programs Administration, Department of Transportation (DRT-20), 400 7th Street, SW., Washington, DC 20590, (202) 366-4355.

### SUPPLEMENTARY INFORMATION:

Each day the meeting will open with an overview of the federal radionavigation planning process, the federal Radionavigation Plan, and current plans and policy for Federally operated radionavigation systems. This information relates to the selection of a future mix of radionavigation systems as required by the Federal Radionavigation Plan. An opportunity will be provided for organizations or individuals representing the users and suppliers of radionavigation systems to participate in the meeting and make their comments to representatives of FAA, Coast Guard, RSPA, Maritime Administration and other government agencies participating in the conference.

Issued in Washington, DC on August 16, 1989.

Jerry W. Bradley,  
Manager, Requirements & CNS Concepts Branch.

[FR Doc. 89-19789 Filed 8-22-89; 8:45 am]  
BILLING CODE 4910-13-M

### Radio Technical Commission for Aeronautics (RTCA); Special Committee 135—Environmental Conditions and Test Procedures for Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92-463; 5 U.S.C. App. I), notice is hereby given for the fifteenth meeting of RTCA Special Committee 135 on Environmental Conditions and Test Procedures for Airborne Equipment to be held September 19-21, 1989, in the Society of Automotive Engineers Headquarters, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096, commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) introduction of attendees; (3) approval of the fourteenth meeting's minutes, RTCA Paper No. 270-89/SC135-302; (4) review the fifth draft of the proposed revision to DO-160B/ED-14B, RTCA Paper No. 269-89/SC135-301 (section reviews will be coordinated by assigned Change Coordinators); (5) review



completion schedule for revised draft; (6) review new proposal for section 22.0, "Lightning Induced Transient Susceptibility"; (7) other business; (8) date and place of next SC-135 meeting and future joint meetings of SC-135/WG-14; and (9) joint plenary meeting with ISO/TC 20/SC 5 (last day of 3-day meeting, September 21, 1989).

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 16, 1989.

**Geoffrey R. McIntyre,**

*Designated Officer.*

[FR Doc. 89-19790 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

#### **Manufacturing Inspection District Office at Dallas-Fort Worth Airport; Opening**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Information Notice.

**SUMMARY:** This Notice announces that the Manufacturing Inspection District Office (MIDO) will be moving from the Fort Worth Regional Office to the Dallas-Fort Worth (DFW) International Airport. This move involves moving the office for six employees approximately 20 miles. Additional space is needed to accommodate present personnel and increased staffing that is anticipated for a tiltrotor certification program and for increased production surveillance activities. The present office space cannot be expanded to accommodate increased staffing and the DFW location will allow a more centralized location in which to better serve the public.

**OPENING DATE:** September 1, 1989.

**ADDRESSES:** Federal Aviation Administration, DFW MIDO-42, DFW Business Center, Suite 325, DFW International Airport, Texas 75261.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Merrill, Manager, Manufacturing Inspection Office, ASW-180, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0180, telephone No. (817) 624-5180 or FTS 734-5180.

Issued in Fort Worth, Texas.

**James D. Erickson,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service*

[FR Doc. 89-19688 Filed 8-22-89; 8:45 am]

BILLING CODE 4910-13-M

#### **DEPARTMENT OF THE TREASURY**

##### **Public Information Collection Requirements Submitted to the Office of Management and Budget for Review**

Date: August 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

##### **Internal Revenue Service**

*OMB Number:* New

*Form Number:* 8818

*Type of Review:* New Collection

*Title:* Record of Redemption of

College Savings Bonds Issued After 1989

*Description:* If an individual redeems U.S. Savings Bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds is excludable from income. The form can be used by the individuals to keep a record of the bonds cashed so that he or she can claim the proper interest exclusion.

*Respondents:* Individuals or households

*Estimated Number of Respondents:* 25,000

*Estimated Burden Hours Per*

*Response/Recordkeeping:*

Recordkeeping, 7 minutes; Learning about the law or the form, 3 minutes; Preparing the form, 15 minutes.

*Frequency of Response:* Other (kept by taxpayers)

*Estimated Total Recordkeeping/Reporting Burden:* 20,500 hours.

*OMB Number:* 1545-0126

*Form Number:* 1120F

*Type of Review:* Revision

*Title:* U.S. Income Tax Return of a Foreign Corporation

*Description:* Form 1120F is used by foreign corporations that have investments, or a business, or a branch in the U.S. The IRS uses Form 1120F to

determine if the foreign corporation has correctly reported its income, deductions and tax and if it has paid the correct amount of tax.

*Respondents:* Businesses or other for-profit

*Estimated Number of Respondents:* 18,000

*Estimated Burden Hours Per Response/Recordkeeping:*

Recordkeeping, 100 hours, 55 minutes; Learning about the law or the form, 29 hours, 34 minutes; Preparing the form, 55 hours, 47 minutes; Copying, assembling, and sending the form to IRS, 6 hours, 42 minutes.

*Frequency of Response:* Annually

*Estimated Total Recordkeeping/Reporting Burden:* 3,600,000 hours

*OMB Number:* 1545-0892

*Form Number:* 8300

*Type of Review:* Revision

*Title:* Report of Cash Payments over \$10,000 Received in a Trade or Business

*Description:* Anyone in a trade or business who, in the course of such trade or business, receives more than \$10,000 in cash or foreign currency in one or more related transactions must report it to the IRS and provide a statement to the payor. Any transactions which must be reported under Title 31 on Form 4789 is exempted from reporting the same transaction on Form 8300.

*Respondents:* Farms, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations

*Estimated Number of Respondents:* 8,300

*Estimated Burden Hours Per*

*Response/Recordkeeping:* 18 minutes

*Frequency of Response:* On occasion

*Estimated Total Recordkeeping/*

*Reporting Burden:* 9,127 hours

*OMB Number:* 1545-0956

*Form Number:* 5500EZ

*Type of Review:* Revision

*Title:* Annual Return of One-Participant (Owners and Their Spouses) Pension Benefit Plan

*Description:* Form listed in item 4 is an annual return filed by a one-participant or one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

*Respondents:* Farms, Businesses or other for-profit, Small businesses or organizations

*Estimated Number of Respondents:* 50,000

*Estimated Burden Hours Per Response/Recordkeeping:*



Recordkeeping, 10 hours, 17 minutes; Learning about the law or the form, 1 hour, 4 minutes; Preparing the form, 2 hours, 13 minutes; Copying, assembling, and sending the form to IRS, 16 minutes.

**Frequency of Response:** Annually  
**Estimated Total Recordkeeping/Reporting Burden:** 691,000 hours

**Clearance Officer:** Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

**OMB Reviewer:** Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-19779 Filed 8-22-89; 8:45 am]

BILLING CODE 4810-25-M

## Office of the Secretary

### Supplement to Department Circular—Public Debt Series—No. 23-89

#### Treasury Bonds of 2019

Washington, August 11, 1989.

The Secretary announced on August 10, 1989, that the interest rate on the bonds designated Bonds of 2019, described in Department Circular—Public Debt Series—No. 23-89 dated August 3, 1989, will be 8½ percent. Interest on the bonds will be payable at the rate of 8½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-19768 Filed 8-22-89; 8:45 am]

BILLING CODE 4810-40-M

### Supplement to Department Circular—Public Debt Series—No. 22-89

#### Treasury Notes, Series C-1999

Washington, August 10, 1989.

The Secretary announced on August 9, 1989, that the interest rate on the notes designated Series C-1999, described in Department Circular—Public Debt Series—No. 22-89 dated August 3, 1989, will be 8 percent. Interest on the notes will be payable at the rate of 8 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-19769 Filed 8-22-89; 8:45 am]

BILLING CODE 4810-40-M

### Supplement to Department Circular—Public Debt Series—No. 21-89

#### Treasury Notes, Series T-1992

Washington, August 9, 1989.

The Secretary announced on August 8, 1989, that the interest rate on the notes designated Series T-1992, described in Department Circular—Public Debt Series—No. 21-89 dated August 3, 1989, will be 7½ percent. Interest on the notes will be payable at the rate of 7½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-19770 Filed 8-22-89; 8:45 am]

BILLING CODE 4810-40-M

## Customs Service

[T.D. 89-80]

### Guidance for Interpretation of Harmonized System

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice giving guidance on use of certain documents to Interpret Harmonized Tariff Schedule of the United States.

**SUMMARY:** Since the entry into force of the Harmonized Tariff Schedule, much interest has been generated in the international trade community as to the weight accorded by Customs to various types of documents by the Customs Cooperation Council. This document sets forth Customs views regarding these documents.

**FOR FURTHER INFORMATION CONTACT:** Paul Giguere, Director, International Nomenclature Staff, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-8530).

#### SUPPLEMENTARY INFORMATION:

##### Background

Pursuant to section 1204 of Public Law 100-418, the Omnibus Trade and Competitiveness Act of 1988, the Harmonized Tariff Schedule of the United States (HTS) was implemented effective as to merchandise entered or withdrawn for consumption on or after January 1, 1989.

Since the implementation of the HTS, Customs has been urged to take into consideration a host of documents as background documentation in the classification of goods. These have included, not only the Explanatory Notes to the Harmonized System (HS), but such documents as reports of the Nomenclature Committee (the committee that administered the

Customs Cooperation Council Nomenclature), letters from the Secretariat of the Customs Cooperation Council (CCC) and rulings and regulations from other Customs administration. All of these matters are urged on Customs as an indication of the intent of the Harmonized System Committee (HSC) in drafting the system, or, sometimes, on the grounds that Customs has an obligation to interpret the HTS in uniformity with the interpretation of the CCC or that of other Contracting Parties to the Convention on the Commodity Description and Coding System (the Convention).

This notice explains Customs position on the various documentation that is available and gives an overall assessment of the weight that should be accorded to the various documents.

Uniformity in the interpretation of the international system, the HS, is not a function of Customs. Customs is charged with the administration and interpretation of the HTS, the tariff enacted by Congress. The function of maintaining the uniform application of the HS resides with the HSC per Article 7 of the Convention. It is fundamental that the United States did not give up sovereignty when it acceded to the Convention. There is, as such, no obligation on Contracting Parties for uniform application of the HS. There is, however, an obligation on Contracting Parties to "not modify the scope of the sections, chapters, headings or subheadings of the Harmonized System." Consequently, Customs takes background documentation into consideration so that classification rulings do not so modify the system.

#### The Committees

An understanding of the documentation issued by the CCC requires some background into the various committees that dealt with the HS. The HS was drafted by a committee known as the HSC. Unfortunately this is the same name as the committee formed under the Convention, and this has produced some confusion. Four committees have dealt with the HS: (1) The HSC which existed from 1973 to 1983; (2) the Interim HSC; (3) the HSC formed under the Convention; and (4) the Nomenclature Committee.

**The drafting Harmonized System Committee:** The HSC which was charged with drafting the HS met in 31 sessions from June 1973 to June 1983. Its reports are designated: Summary Record of the xx Session of the Harmonized System Committee and its Working Party.



*The Interim Harmonized System Committee (IHSC):* This committee met in 9 sessions, jointly with the Nomenclature Committee, from 1983 till the Convention went into force on January 1, 1988. It drafted the HS Explanatory Notes and reviewed the Compendium of Classification Opinions. Although it had no particular legal standing it did make proposals for amending the HS.

*The Harmonized System Committee:* The committee formed under the Convention. It is the committee currently charged with the administration of the Convention. It meets twice a year and held its first session in April 1988.

*The Nomenclature Committee:* The committee formed to administer the Customs Cooperation Council Nomenclature (CCCN) (first known as the Brussels Tariff Nomenclature), the nomenclature which is replaced by the HS. Because the Nomenclature Committee had agreed to amend the CCN to conform to the HS, it reviewed the work of the HSC to see if it found it acceptable for purposes of the CCCN.

#### The Documents

##### Explanatory Notes

The status of the Explanatory Notes (ENs) to the HS is specifically addressed in the report of the Joint Committee on the Omnibus Trade and Competitiveness Act of 1988. It is there stated:

The Explanatory Notes constitute the Customs Cooperation Council's official interpretation of the Harmonized System. They provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system.

The Explanatory Notes were drafted subsequent to the preparation of the Harmonized System nomenclature itself, and will be modified from time to time by the CCC's Harmonized System Committee. Although generally indicative of proper interpretation of the various provisions of the Convention, the Explanatory Notes, like other similar publications of the Council, are not legally binding on contracting parties to the Convention. Thus, while they should be consulted for guidance, the Explanatory Notes should not be treated as dispositive.

This is a clear statement of the intent of Congress in adopting the HS as a basis for the U.S. Tariff. The status outlined by the Joint Committee of Congress applies only to the ENs and "similar publications of the Council." In that connection Customs would point out that the only similar publication of the Council is the Compendium of Classification Opinions.

Among the international conventions administered by the CCC, the HS is a replacement for the former CCCN. There were ENs to the CCCN and they are sometimes cited in requests for rulings. The CCCN ENs have no value in interpreting the HS. They are the ENs to a different system; one which is now virtually nonexistent since most nations have adopted the HS.

It should also be noted that the ENs are a dynamic instrument reflecting the intent of the Contracting Parties on the application and interpretation of the HS. They will be amended from time to time and may thus reflect a change in interpretation. Customs believes they should always be consulted.

##### Classification Opinions

The CCC publishes a Compendium of Classification Opinions. These opinions represent decisions by the HSC on the classification of various products that were presented to the HSC for consideration. When a classification question is presented to the HSC, the Committee will frequently draft an opinion to be published in the Compendium. However, that is not always the case. Sometimes the decision of the HSC is converted into an amendment to the ENs, and sometimes it is merely reported in the report of the session of the HSC when the decision was made. The decision is included in the Compendium when it is thought to be particularly instructive.

When a decision of the HSC is published in the Compendium it should receive the same weight as ENs. They constitute the official interpretation of the HS in consideration of a particular issue placed before the HSC.

There was also a Compendium of Classification Opinions under the CCCN. The Interim HSC reviewed that Compendium and adopted into the HS Compendium a number of the CCCN opinions. Approximately 20 percent of the CCCN opinions were carried over to the HS. The remainder were discarded, some because they were outdated, some because their substance had been incorporated into the HS ENs and some because they were thought to be erroneous under the HS. Opinions reported in the CCCN Compendium have no validity under the HS for the same reasons the CCCN ENs are not valid under the HS.

##### HSC Reports Prior to July 1983

The HSC prior to 1983 was tasked with drafting the HS. This required numerous decisions and these are reported in the Summary Records of the HSC sessions. The Summary Records of HSC sessions are a resource in

ascertaining the intent of the Committee in the drafting of any particular text. Because the sessions were long and rather involved, the deliberations of the Committee are reported only in summary form. The Summary Records do contain reports on a number of decisions of the HSC. When such decisions are clearly reported they constitute history for the text concerned. The Summary Records are available to the public through the Department of Commerce National Technical Information Service. While these documents do not carry the weight of the ENs or the Compendium of Classification Opinions, they are frequently guides to the intention of the HSC.

##### Interim HSC Reports

The IHSC drafted the ENs and reviewed the CCCN Compendium of Classification Opinions. The reports of this Committee have the same relationship to those documents as do the Summary Records of the HSC to the legal texts of the HS. Since the ENs have no legal standing, these reports are not considered history for the HS. Customs considers them to be instructive in some instances.

The IHSC also considered a number of amendments to the HS. Because the IHSC had no defined standing, all of the IHSC decisions on amendments were referred to the HSC when the Convention came into force. Therefore, for some of the proposed amendments to the HS, background information can be found in the reports of the IHSC.

##### Report of the HSC After 1/1/88

The Convention went into force on January 1, 1988, and sessions thereafter are reported in Reports of the Harmonized System Committee. The first session was held in April 1988. Decisions of this committee are advice and guides to the interpretation of the HS. None of these decisions are binding, but Customs considers that they often provide valuable insight into how the HSC views certain provisions.

In rendering its decisions, the HSC also usually decides whether the decision merits an amendment to the ENs, the issuance of a classification opinion to be added to the Compendium, or to merely report the decision in the report of the session. If the decision results in amendment of the EN or goes into the Compendium, it, then, should receive considerable weight. As Congress made clear, however, the decision should not be treated as dispositive.



Decisions of the HSC that are merely given in the report should be given little weight.

Decisions to amend the HS itself need to go through the amendment procedure provided in the Convention. They require domestic legislation to go into effect in the United States.

#### *Nomenclature Committee Reports*

Customs is frequently asked to consider reports of the Nomenclature Committee. They carry virtually no weight. Decisions of the Nomenclature Committee cannot imply an intent on the HSC. They are two separate committees, differently constituted, and set up for different purposes.

Normally, the HSC received reports from the Nomenclature Committee without comment. When the HSC adopted an opinion or decision of the Nomenclature Committee it was specifically noted in the Summary Record.

When the HS was drafted it was decided to prepare an entirely new convention to implement it. It was the intention of the HSC to start anew; to have a new convention unencumbered by the many years of action by the Nomenclature Committee. Although the HS is primarily based on the CCCN, it is a new and different nomenclature with a convention that provides for substantial difference in its voting membership. Customs finds that there is no reason to believe that questions decided by the Nomenclature Committee would produce the same result in the HSC.

#### *Working Documents*

Customs calls "working documents" those documents issued by the Nomenclature and Classification Directorate of the CCC. These are the documents that form the basis for discussions in HSC sessions. They carry

virtually no weight in interpreting the system. Working documents usually consist of commentary by delegations on questions before the Committee, commentary by the Secretariat on various drafts and proposals, commentary by the Secretariat on the comments made by delegations, and other material designed to frame the question the HSC is to discuss and to stimulate the discussion. Because it is preliminary material, none of it reflects the intent of the HSC.

The working documents are sometimes interesting because they contain more detailed descriptions of the goods under consideration and they sometimes contain the rationale for certain positions.

#### *Rulings of Other Countries*

The General Rules for the Interpretation of the Harmonized System, the Section and Chapter Notes and the first six digits of the Harmonized System constitute the international nomenclature. Therefore, in principle, all Contracting Parties to the Convention should give the same classification to identical merchandise through the six-digit subheading level. In this regard, classification rulings from other Customs administrations are sometimes submitted to Customs with a ruling request as evidence of how similar merchandise has been classified under the HS by that country.

Customs is not bound to abide by another country's rulings. The foreign ruling may have been subject to political realities or domestic regulations which are different from our own. The merchandise at issue in our ruling may not be identical to that in the foreign ruling. In either case, the foreign ruling is unlikely to describe fully the context in which it was issued. Therefore, at best, the foreign ruling is merely

instructive of how others may classify like goods.

#### *Position Papers*

Prior to each session of the HSC, Customs, the International Trade Commission and the Bureau of the Census prepare position papers to reflect the position to be taken by the U.S. delegation at the session. These documents in no way reflect the position of Customs in the interpretation of the HTS. Position papers are guides for the delegation in the context of the HSC session; they are essentially negotiating positions. They are mentioned here because some position papers have received some circulation and have been cited in support of a classification; they have no value whatever for such purposes.

#### *Summary*

Customs is charged with the interpretation of the HTS and not, as such, of the HS.

Customs concern in looking at documents is to find the scope of headings and subheadings of the HTS.

As indicated by Congress, Customs will give considerable weight to Explanatory Notes and the Compendium of Classification Opinions because they are the official interpretation of the HS, but they shall not be treated as dispositive.

When it is necessary to determine the intent of the HSC, Customs will look to the Reports and Summary Records of the HSC.

Other documentation may be consulted for information purposes only.

Approved: August 16, 1989.

D. Lynn Gordon,  
Assistant Commissioner, Commercial  
Operations.

[FR Doc. 89-19763 Filed 8-22-89; 8:45 am]

BILLING CODE 4820-02-M



# Sunshine Act Meetings

Federal Register

Vol. 54, No. 162

Wednesday, August 23, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 17, 1989.

**TIME AND DATE:** 10:00 a.m., Thursday, August 24, 1989.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *Secretary of Labor, MSHA v. Garden Creek Pocahontas Co.*, Docket No. VA 88-9,

etc. (Issues include whether certain injuries were "occupational injuries" required to be reported to MSHA pursuant to 30 CFR 50.20(a).)

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10))

The meeting will be closed after discussion of the above.

The Commission will continue its consideration of the following:

2. *Westwood Energy Properties*, Docket No. PENN 88-42-R. (Issues include whether Secretary has jurisdiction under the Mine Act to inspect operations involving a culm bank at Westwood's power plant.)

3. *FMC Wyoming Corporation*, Docket No. WEST 86-43-RM, etc. (Issues include whether FMC Wyoming's violation of 30 CFR 57.5002 was a significant and substantial contribution to a mine health hazard and the

result of FMC's unwarrantable failure to comply, and whether FMC violated 30 CFR 57.18002.)

Any person intending to attend the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFO:** Jean Ellen, (202) 653-5629/(202) 708-9300 for TDD Relay.

Jean H. Ellen,  
Agenda Clerk.

[FR Doc. 89-19970 Filed 8-21-89; 12:07 pm]

BILLING CODE 6735-01-M



# Corrections

Federal Register

Vol. 54, No. 162

Wednesday, August 23, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TQ89-3-27-000]

#### North Penn Gas. Co.; Notice of Proposed Changes in FERC Gas Tariff

##### Correction

In notice document 89-19263 beginning on page 33964 in the issue of Thursday, August 17, 1989, make the following corrections:

1. On page 33964, in the third column, the date preceding the first paragraph of the document is corrected to read "August 11, 1989".
2. On page 33965, in the first column, the FR Doc. line is corrected to read:

[FR Doc. 89-19263 Filed 8-16-89; 8:45 am]

BILLING CODE 1505-01-D

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

[Docket No. FEMA 6959]

#### Proposed Flood Elevation Determinations

##### Correction

In proposed rule document 89-15012 beginning on page 26802 in the issue of Monday, June 26, 1989, make the following corrections:

1. On page 26802, in the table, in the third column, "Campbell" should read "Campbell Creek".
2. On page 26803, under "Arizona", in the second column, insert a comma after "City of Casa Grande".
3. On the same page under the same State in the last column, in the second entry, "1368" should read "'1368".
4. On the same page, under "California", in the second and third

columns, remove the second and fourth entries respectively.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

#### 42 CFR Part 484

[BERC-476-IFC]

RIN 0938-AD45

#### Medicare Program; Home Health Care Agencies; Conditions of Participation and Reduction in Recordkeeping Requirements

##### Correction

In rule document 89-18762 beginning on page 33354 in the issue of Monday, August 14, 1989, make the following correction:

- On page 33369, in the third column, following § 484.12(c), remove the FR Doc. line and the Billing Code line.

BILLING CODE 1505-01-D



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# Testis Great Testis

Wednesday  
August 23, 1989

## Part II

### Office of Personnel Management

Department of Agriculture; Proposed  
Demonstration Project; Notice



## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Demonstration Project; Department of Agriculture

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of a proposed demonstration project.

**SUMMARY:** Title VI of the Civil Service Reform Act authorizes the Office of Personnel Management (OPM) to conduct demonstration projects which experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedure would result in improved Federal personnel management. This notice meets the legal requirement under Title VI that OPM publish a project plan in the *Federal Register* before conducting, or entering into any contract or agreement to conduct, a demonstration project.

**DATES:** *Comment date:* To be considered, written comments must be received on or before October 23, 1989. *Hearing date:* A public hearing will be held on the proposed plan on October 18, 1989, at the Jefferson Auditorium, U.S. Department of Agriculture, South Building, 14th and Independence Avenue SW., Washington, DC, beginning at 10:00 a.m.

**ADDRESSES:** Comment address: Written comments may be addressed to Donna Beecher, Assistant Director for Systems Innovation and Simplification, U.S. Office of Personnel Management, 1900 E Street NW., Room 7638, Washington, DC 20415. Public hearing address: Jefferson Auditorium, U.S. Department of Agriculture, South Building, 14th and Independence Avenue SW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

(1) On proposed demonstration project and public hearing: Mary Ellen Recchia, U.S. Department of Agriculture, (202) 447-8580; (2) on proposed demonstration project, Paul R. Thompson, Office of Personnel Management, (202) 632-6164.

**SUPPLEMENTARY INFORMATION:** On proposed demonstration project: the Department of Agriculture has submitted a proposed demonstration project for consideration under chapter 47 of title 5, U.S. Code entitled "The U.S. Department of Agriculture Demonstration Project."

The purpose of the project is to demonstrate a flexible and responsive staffing system which will permit managers to attain a quality workforce reflective of society. To this end, the demonstration project tests four major

innovations in current personnel policy and practice:

(1) Delegation of authority for the day-to-day recruitment and hiring process to the agency for internal redelegation, as appropriate;

(2) A streamlined candidate assessment and selection process, based on greater delegation of direct hire authority and replacement of numerical ratings with broad quality groupings;

(3) Recruitment incentives, including bonuses and relocation expenses, to attract candidates to hard-to-fill positions; and

(4) Establishment of a 2-3 year provisional appointment, to provide greater opportunity to evaluate employee performance before granting career status.

The demonstration project will cover up to 5000 newly hired employees, at any given time, at over 130 locations within the Forest Service and the Agricultural Research Service. Covered employees will represent all occupational groups and grade levels (excluding SES) at the project sites, including both General Schedule (GS) and Federal Wage System (FWS) employees.

On public hearing: A public hearing will be conducted by OPM at the Department of Agriculture in Washington, DC on October 18, 1989. At this time, interested persons or organizations may present their written or oral comments on the proposed demonstration project. The hearing will be informal. However, anyone wishing to testify should contact the person listed under "FOR FURTHER INFORMATION CONTACT," so that OPM can plan the hearing and provide sufficient time for all interested persons and organizations to be heard. Priority will be given to those on the schedule, with others speaking in any remaining available time. Each speaker's presentation will be limited to 10 minutes. The hearing record will be left open two weeks, until November 1, 1989, to receive additional written data, comments, and arguments from hearing participants.

U.S. Office of Personnel Management.  
Constance B. Newman,  
Director.

The plan for the proposed demonstration project reads as follows:

#### U.S. Department of Agriculture, Demonstration Project—Project Plan

##### Table of Contents

- I. Executive Summary
- II. Introduction
  - A. Purpose
  - B. Problems with the Present System
  - C. Benefits to be Derived from the Project
  - D. Participating Organizations

E. Types and Numbers of Participating Employees

#### III. Methodology

A. Objective #1

B. Objective #2

#### IV. Training

V. Cost/Benefit Analysis

VI. Duration of the Project

VII. Evaluation Plan

Table 1: Expected Effects, Measures, Data Sources

VIII. Experimental Design

Appendix A: Required Waivers to Law and Regulation

Appendix B: Experimental and Comparison Sites

## I. Executive Summary

### A. Purpose

The purpose of this demonstration project is to develop a recruitment and selection program for new hires that is flexible and responsive to local recruitment needs and which will facilitate the attainment of a quality workforce reflective of society.

In support of this goal, the following project objectives have been identified:

(1) Increase the flexibility and responsiveness of the recruitment and hiring system.

(2) Increase the reliability of the decision to grant career tenure.

During the course of this project, the following interventions will be tested:

(a) Decentralize the decision to authorize direct hire in shortage categories.

(b) Establish an alternative candidate assessment method which uses categorical grouping instead of numeric score.

(c) Provide monetary incentives for recruitment purposes.

(d) Reimburse travel and transportation expenses beyond those currently authorized for travel to first post of duty.

(e) Make initial appointments on a provisional basis, with career tenure earned through on-the-job performance.

### B. Benefits To Be Derived From the Project

The combined changes are expected to simplify the hiring system, and to improve the ability of the agency to compete for quality candidates, reflective of society.

### C. Project Administration

The project is a joint effort on the part of the U.S. Department of Agriculture Office of Personnel, the Agricultural Research Service, and the Forest Service. The project will be guided by an Executive Steering Committee and conducted through a project task group. Representatives from the Office of



Personnel, the Agricultural Research Service, and the Forest Service, will serve on both the steering committee and the task group, reflecting the joint nature of the project.

#### *D. Participating Organizations*

The demonstration project will be conducted entirely within the Agricultural Research Service and the Forest Service of the U.S. Department of Agriculture, at selected experimental and comparison sites, which have been listed in Appendix B. These sites may be subject to change prior to final implementation.

#### *E. Types and Numbers of Participating Employees*

Demonstration project coverage is limited to 500 employees hired under project provisions and currently serving under a provisional appointment or receiving a recruitment incentive. Since the project covers only prospective new hires, the occupational mix of participating employees cannot be identified precisely. Based on historical staffing patterns at the participating sites, it is anticipated that the annual breakdown of new hires will include the following approximate percentages for each of the participating agencies:

Agricultural Research Service: 17% scientific, 9% professional, 11% administrative, 36% technical, and 27% clerical and wage grade.  
Forest Service: 2% scientific, 18% professional, 8% administrative, 43% technical, and 29% clerical and wage grade.

The most populous occupational series at the Agricultural Research Service include biological technician, entomologist, plant physiologist, and chemist. The most populous occupational series at the Forest Service include forester, forestry technician, engineering technician, and civil engineer.

#### *F. Labor Participation*

Agricultural Research Service employees are represented at various experimental locations by the American Federation of Government Employees (AFGE) and the National Federation of Federal Employees (NFFE); Forest Service employees are also represented by both AFGE and NFFE and by the National Association of Government Employees (NAGE).

Briefings will be conducted by both agencies during the developmental stage of the project. In accordance with 5 U.S.C. 4703 (f) and (g), the agencies will consult and negotiate, as appropriate, with employees and labor organizations

before publication of the final project plan.

#### *G. Methodology*

This proposal provides a detailed description of the following interventions, or personnel system changes, to be tested and evaluated during the life of the project: (1) Delegated direct hire authority; (2) an alternative candidate assessment method; (3) recruitment incentives; (4) payment of travel and transportation expenses; and (5) a provisional appointment system.

#### *H. Training*

A comprehensive training effort will be accomplished prior to project implementation in order to ensure that project interventions are implemented as originally conceived.

#### *I. Evaluation Plan*

A preliminary evaluation plan has been designed for the purpose of measuring the outcomes expected to result from project implementation. The scope of the evaluation plan is intended to provide sufficient data to evaluate the Federal sector-wide applicability of each of the interventions.

The evaluation model is part of a quasi-experimental design using experimental and comparison groups matched for characteristics but not necessarily for population numbers. The model will provide statistical and historical data regarding the effects attributable to the experimental treatments. Baseline data collection will occur pre-treatment, and data will be collected during the post-treatment period for comparison and analysis.

## **II. Introduction**

#### *A. Purpose*

The project was conceived in response to managerial concern with the adequacy of the present recruiting and hiring system in light of the predicted recruitment challenges of the future, which have been described in recent publications including Workforce 2000, and Civil Service 2000, which were prepared by the Hudson Institute for the Department of Labor and The Office of Personnel Management, respectively. The purpose of this project is to develop and test an alternative system which will enable Federal managers to meet these challenges.

Workforce 2000 outlines an employment future characterized by a slowly growing population, which will result in slower labor force growth. This, in turn, is expected to result in tighter labor markets, with fewer well-educated workers available, and increased

competition among employers for available candidates.

Civil Service 2000 provides the following analysis of the impact of these trends within the Federal sector:

"Because these tight labor markets are likely to develop in different ways in different states and to shift quickly in response to economic and population changes, it is essential to decentralize responsibility and to provide more flexibility in hiring and personnel management than is characteristic of the current system. Federal employers in locally tight or expensive labor markets must be able to compete for workers on a par with private employers if they are to continue to fulfill their responsibilities" (page 27).

This publication goes on to describe a slowly emerging crisis of competence, as labor markets become tighter and it becomes increasingly more difficult to hire qualified workers. The competition for qualified workers will only intensify, for coupled with slower labor force growth is the fact that substantial numbers of new entrants to the labor market will have lower levels of competence in language, math, and other basic skills. The inability of Federal agencies to adapt as easily as private employers to fluctuating labor market conditions means that, "... some of them will be unable to compete successfully with the private sector, and may find it much harder to recruit and keep good employees" (page 30).

It is imperative that Federal managers and others in positions of responsibility prepare to meet the recruitment challenges of the future. This project was developed as part of a continuing effort to anticipate and successfully confront these challenges. The strategies and recommendations provided by Workforce 2000, Civil Service 2000, and other publications provided guidance and direction as we developed this project. It is our intention to evaluate the demonstration project in order to determine the extent to which each intervention impacts the recruitment and hiring program.

It is anticipated that an alternative recruitment and hiring system, offering expanded incentives for recruitment purposes, will enable Federal managers to more readily adapt to fluctuating labor market conditions. In addition, the level of performance demonstrated by those hired under the new system is expected to be equal to the level of performance demonstrated by employees hired through traditional methods.



### B. Problems With the Present System

The current method of employee intake, through centralized testing, assumes a surplus of applicants for available positions within the Federal sector, with a concomitant emphasis on the stratification process required to provide manageable rosters of best qualified candidates from among the numerous applicants for a given position vacancy.

In reality, however, the manner in which changing demographics have fundamentally altered the American labor force has been well documented in the publications cited above. As the population ages and technological innovation accelerates, shortages of qualified candidates either already exist or are predicted to develop in a wide variety of occupations. Trend lines indicate an exacerbation of this problem. Simply stated, the supply/demand curve for labor resources no longer reflects an excess of supply but, rather, an almost insatiable demand for well-trained, quality candidates.

For example, the Forest Service has been recruiting candidates with backgrounds in engineering research combined with a knowledge of wood technology. These candidates are in exceedingly short supply; the few meeting these criteria are found either in academia, or conducting research in private wood technology firms. Experience has shown that potential candidates have been lost to competing employers who can more quickly make position offers and establish reporting dates.

As another example, the Agricultural Research Service has advertised a GS-13 Plant Geneticist position at a remote location on two separate occasions during the past year and received only two applications. Neither applicant possessed the highly specialized skills necessary to perform the duties of the position. The availability of recruitment incentives might have enhanced the ability of the agency to attract qualified candidates to this location.

### C. Benefits To Be Derived From the Project

The demonstration system is expected to simplify the selection and appointment of candidates to the Federal service. Additionally, the system is expected to improve the ability of agencies to compete with other public employers and private industry for available quality candidates.

### D. Participating Organizations

Agricultural Research Service and Forest Service experimental and

comparison sites are identified in Appendix B. These sites may be subject to change prior to final implementation.

### E. Types and Numbers of Participating Employees

Demonstration project coverage is limited to permanent new hires receiving provisional appointment to the competitive service at the experimental sites identified in Appendix B whose appointments fall within the following categories: First permanent competitive Federal appointment, and appointments currently made under Schedule B PAC or future equivalent.

Excluded from coverage are candidates who transfer from other Federal agencies; candidates whose initial appointments confer noncompetitive conversion eligibility (other than Schedule B PAC), e.g., appointments through cooperative education programs, Veterans Readjustment appointments, etc.; and candidates for positions for which direct hire authorized by OPM is in effect at any time during the life of the project.

Candidates with reinstatement eligibility as currently defined by regulation may continue to be noncompetitively appointed under the reinstatement authority. At the discretion of the selecting official, however, these candidates as well as candidates eligible for any of the appointment types listed under exclusions, above, may be considered for competitive appointment under the demonstration project authority and all provisions pertaining thereto.

Candidates for appointment to the Senior Executive Service or under the Executive Assignment System are excluded from coverage.

Demonstration project coverage is extended to General Schedule (GS), Federal Wage System (FWS), and Performance Management and Recognition System (PMRS) employees, regardless of occupational series.

The rate at which the number of accessions approaches the regulatory limitation of 5,000 employees to be covered under this authority will be centrally monitored throughout the test sites.

## III. Methodology

### A. Objective #1: Increase the Flexibility and Responsiveness of the Recruitment and Hiring System

#### 1. Interventions

(a) Decentralize the decision to authorize direct hire in shortage categories.

(b) Establish an alternative candidate assessment method which uses

categorical grouping instead of numeric score.

(c) Provide monetary incentives for recruitment purposes.

(d) Reimburse travel and transportation expenses beyond those currently authorized for travel to first post of duty.

Interventions (a) and (b), and (c) and (d), will be discussed separately in the sections that follow.

## 2. Description of Interventions (a) and (b)

A. *Introduction.* Civil Service 2000 recommends a number of strategies for attracting, hiring, training, motivating, and keeping talented people. Chief among these is the following: "Decentralize authority and responsibility for operations and hiring \* \* \* Standardized recruiting, testing, competition, classification, and pay should give way to decentralized personnel management, giving agency managers full responsibility not only for their missions, but for the human resources they need to accomplish them \* \* \*" (page 32).

The concept of decentralized authority and full responsibility for human resources is fundamental to this project. The alternative system is founded upon the assumption that centralized registers no longer meet local hiring needs and that a level of qualifications can be established at which all candidates meeting this level are well qualified. Selection will be made from this group following the normal candidate evaluation process, which may include such additional measures as personal interview, reference checks, etc.

The experimental sites will have examining authority for all of their positions. The elimination of centralized registers which establish fine distinctions among candidates will be balanced by an increased emphasis on the responsibility and accountability of managers for ensuring that selection and advancement are determined on the basis of the ability, knowledge, and skills necessary to perform the duties of the position.

This system is expected to produce a workforce equal to that which has been obtained through traditional testing and examining, without compromising the merit system principles, outlined in 5 U.S.C. 2301, which stipulate that, " \* \* \* Recruitment should be from qualified individuals from appropriate sources in an effort to achieve a workforce from all segments of society, and selection and advancement should be determined solely on the basis of relative ability,



knowledge, and skills, after fair and open competition which assures that all receive equal opportunity."

Fair and open competition will be provided by the proposed system as follows:

(1) All candidates (other than those eligible for appointment under the direct hire option) will be considered against the same job-related evaluation criteria for the purpose of placing candidates in the quality group.

(2) All candidates meeting these criteria will be available for selection, taking veterans preference into account. Candidates who do not meet these criteria are available for selection when there is an inadequate number of candidates in the quality group.

(3) Candidates will no longer be eliminated from consideration by the rule of three or point score ranking.

(4) Information regarding all vacancies to be filled under the demonstration project authority shall be made available to the appropriate State Employment Service offices and local Federal Job Information Centers.

Finally, recognizing the mandate contained in title 5, U.S. Code, that the work force be from all segments of society, and to the extent that the current system may be a barrier to proportional representation of protected groups, the alternative system will allow managers and supervisors more direct access to a candidate pool that is reflective of society.

*b. Overview of Method.* Candidates eligible for appointment under the demonstration project authority will be evaluated using the following method:

(1) Candidate's basic eligibility is determined using OPM Handbook X-118 or modified standard, as outlined below. Questions regarding a candidate's suitability or general fitness to perform the duties of the position may be resolved at this or at any stage prior to appointment.

(2) Candidates meeting basic eligibility requirements are then evaluated for eligibility under the direct hire option, which allows candidates in shortage categories to be directly appointed.

(3) All remaining candidates meeting basic eligibility requirements are evaluated against job-related evaluation criteria, outlined below, which measure above average educational achievement, quality experience, and high ability. Candidates meeting any one of these criteria are placed in the quality group.

Selection will be made from the quality group, taking into account such factors as personal interview or reference check, etc. Candidates not meeting any of these criteria are in the

eligible group, and may only be selected when there is an inadequate number of quality candidates available. Veterans preference will apply when selecting candidates from either group. The agency will justify the nonselection of preference eligibles.

*c. Recruitment Methods and Sources.* The agency will identify appropriate recruitment methods and sources in order to ensure that qualified candidates are available for consideration. Demonstration project implementation at experimental sites does not preclude the use of other available noncompetitive appointing authorities intended to facilitate access to particular candidates, e.g., disabled individuals, students eligible for cooperative education programs, etc. The continued use of these programs is encouraged in support of agency employment goals and objectives.

Appropriate recruitment methods and sources include those that are likely to yield candidates with knowledges, skills, or abilities sufficient to perform the duties of the position. Agencies will continue to utilize recruitment methods and sources which identify disabled individuals or members of protected groups.

As no specific waivers of law or regulation are required prior to the development of an effective recruitment strategy, agencies will explore the use of innovative or creative recruitment methods and sources in order to facilitate the attainment of a quality workforce, reflective of society. Towards this end, agencies will take advantage, to the extent necessary, of the full range of telecommunications, printed, and other media in order to reach a sufficient number of qualified candidates.

Recruitment and consideration of candidates under the demonstration project authority will be subject to the following requirements:

(1) Current law and regulation concerning the Reemployment Priority List (RPL), and Displaced Employee (DE) or other outplacement programs, will be observed. The agency is responsible for maintaining and following the regulations concerning the RPL as outlined in pertinent FPM and Departmental guidance. No part of these regulations is waived for the purpose of this project.

Additionally, agencies are responsible for contacting the appropriate OPM office concerning the referral of displaced employees prior to making competitive appointments under the demonstration project authority, and according bona fide consideration, as

appropriate, to DE or other outplacement program eligibles.

(2) Information regarding all vacancies to be filled under the demonstration project authority regardless of source will be made available to the appropriate State Employment Service offices and local Federal Job Information Centers. Procedures for providing such notification will be established at the local level.

Recruitment sources may include, but are not limited to, such activities as attendance at a job fair, career day, or professional association meeting; preparation and distribution of a vacancy announcement; on-campus recruiting; or other focused recruitment effort, etc. Procedures for the acceptance of unsolicited or walk-in applications will be established at the local level.

*d. Determination of Basic Eligibility.*

A determination regarding each candidate's basic eligibility for a particular position will be made utilizing the standard criteria.

No part of law or regulation concerning citizenship requirements, security investigations, or other suitability issues is waived under this authority. Additionally, the requirement to pass any pre-employment physical, drug screening, or other fitness for duty examination remains in effect.

The determination that a candidate meets experience or education requirements will be made using OPM Handbook X-118 or approved single-agency standards. Positive education, licensure, and professional certification requirements will remain in effect as currently reflected in the standards unless waived through some other authority.

Selective placement factors may be established when judged to be critical to successful job performance and will be communicated to all candidates for particular position vacancies. These must be met for basic eligibility.

Test requirements as outlined in X-118 or elsewhere, including minimum typing or stenography scores, are eliminated. Emphasis will instead be placed on the supervisor's assessment of the candidate's ability to do the work of the position. Supervisors may, however, continue to accept candidates' self-certification of typing or stenography proficiency when such documentation is necessary to perform an adequate assessment of basic eligibility.

Agencies are authorized to modify X-118 experience requirements (other than positive education, professional certification, or licensure requirements) when the candidate's background



includes experience which has provided the skills and abilities necessary for successful job performance. Agencies may not, however, require additional amounts of education or experience beyond those required by the standards, other than selective placement factors as indicated above.

The decision to modify X-118 experience requirements is discretionary on the part of the supervisor and is intended to provide management with a recruitment tool which will allow the consideration of candidates for whom X-118 might otherwise serve as a *prima facie* basis for exclusion. The opportunity to qualify under a modified standard, however, will be given to all candidates being considered in connection with a particular position vacancy.

Agencies may delegate the decision to use a modified standard to the lowest practicable level within the organization. The decision to modify X-118 requirements will be documented and placed on the right-hand or permanent side of the Official Personnel Folder.

*e. Candidate Evaluation. (1) Direct Hire of Individuals in Shortage Categories.* Candidates meeting basic eligibility requirements as outlined above, and who are in shortage categories as locally determined by the agency, may be directly appointed. Agency determination of shortage category will be made by applying the criteria in 5 CFR 572.301 or other factors which the agency has determined to be significant, and may be delegated to the lowest practicable level within the organization.

Agency determination of shortage category may include, but is not limited to, consideration of such factors as external or local labor market demands, extent or impact or prior recruitment efforts, critical or recurring need for particular knowledges or skills based on chronic shortages, turbulent state of the art, etc.

A determination by one agency that a shortage of eligibles exists for a particular title, series, grade, and geographical location does not require a like determination by any other agency. A determination made in connection with one specific vacancy does not establish a precedent in connection with future vacancies.

Agency determination of shortage category will be documented. The documentation supporting the decision to appoint an individual under this authority will be placed on the right-hand or permanent side of the Official Personnel Folder.

*(2) Evaluation of Candidates in Non-Shortage Categories.* Candidates meeting basic eligibility requirements as outlined above, but who are not eligible for direct hire as outlined in the section immediately preceding, may be considered for appointment against the job-related evaluation criteria outlined below under above average educational achievement, quality experience, and high ability.

All candidates, to the extent necessary, will be evaluated against each of these criteria; that is, no candidate will be eliminated from the quality group without being considered under the three criteria outlined under (a), (b), and (c), below.

It is hypothesized that all employees hired through this system are equally likely to demonstrate successful job performance, regardless of the criterion under which the candidate qualifies.

Minimum grade point averages established under above average educational achievement or high ability, below, may be adjusted by mutual agreement between the participating agencies and OPM.

(a) Candidates demonstrating above average educational achievement under any of the options outlined below are eligible for the quality category:

1. Candidate has completed all the requirements for, or is a candidate, within nine months, for a high school diploma, or a degree from an accredited junior college, college, university, or other baccalaureate institution, provided he or she meets one of the requirements listed below (b. & c. apply to post-high school only):

a. Candidate's grade point average is at least 2.70 on a 4.0 scale or equivalent. This is either the average of all completed courses at the time of application, or the average of all courses completed during the last two years of a high school, college, or other four year program, in which case verification that the required average was maintained is prerequisite to appointment.

b. Candidate's grade point average in the major field of study is at least 3.0 on a 4.0 scale or equivalent. This is either the average of all completed courses at the time of application, or the average of all courses completed during the last two years of a four year curriculum, in which case verification that the required average was maintained is prerequisite to appointment.

c. Candidate is a member of one of the national honorary scholastic societies meeting the minimum requirements of the Association of College Honor Societies, other than freshman honor societies.

Applicants may not be appointed on the basis of overall grade point average if more than 10 percent of their grades were based on pass/fail or similar systems rather than on traditional grading systems. Such applicants may claim credit under this provision only on the basis of national honorary society membership.

Candidates are required to submit an official transcript or similar correspondence documenting grade point average in order to establish eligibility for appointment based on above average educational achievement. In the event that grade point average has not been computed by the educational institution, an official transcript may provide the basis for manual computation. Transfer credits, foreign credits, and credits from more than one educational institution must be evaluated and included to the extent that they provided the basis for awarding the degree or the certificate.

Eligibility under this provision is awarded to candidates who have completed or who are about to complete a formal educational program culminating in the granting of a degree. Once a candidate has completed a qualifying period of education as outlined above, leading to the completion of a degree or a diploma, and during which a qualifying grade point average was maintained, he or she is eligible for the quality category. Additional course work has no impact on eligibility, once established.

For example, a candidate qualifying on the basis of high school grade point average retains that eligibility even though he or she may go on to complete several more courses as part of a continuing education program. The additional course work does not become part of the overall grade point average computation. However, unsuccessfully completed course work beyond the high school level should be factored into the decision to appoint candidates to administrative, management, specialist, or other positions for which such education would normally be qualifying in lieu of experience.

2. Candidate has completed all requirements for an advanced degree from an accredited institution, appropriate to the position being filled. An advanced degree is defined as beyond the baccalaureate, e.g., D.V.M., M.A., Ph.D., etc. Candidate must provide certification of completion of all degree requirements, e.g., thesis, dissertation, etc.

Evaluation of candidates under this provision will take into account the relevancy of both the type and the level



of education completed to the knowledges, skills, and abilities required to perform the duties of the position.

Candidates are required to submit an official transcript or similar correspondence documenting actual course work, and grade point average, if necessary, in order to establish eligibility for appointment based on above average educational achievement. In the event that grade point average has not been computed by the educational institution, an official transcript may provide the basis for manual computation. Transfer credits, foreign credits, and credits from more than one educational institution must be evaluated and included to the extent that they provided the basis for awarding the degree.

Inasmuch as eligibility under this provision requires completion of a degree or a diploma, candidates who have completed either without meeting any of the criteria outlined above, or who have not completed any type of degree or diploma, will be evaluated under the criteria addressing experience and ability outlined in (b) and (c), below.

(b) Candidates who have quality experience in the field are eligible for the quality category.

Quality experience in the field is defined as directly related experience, and is differentiated from the specialized experience requirements outlined in X-118 to the extent that it is directly related to the position to be filled, was gained in the same functional specialization, and has clearly equipped the candidate with superior ability to perform the duties and responsibilities of the position. The directly related experience must have been at an acceptable level of competence in order to qualify for appointment under this provision.

OPM's generic standard for two-grade interval professional positions defines specialized experience as that, "... which is in or related to the line of work of the position to be filled and which has equipped the applicant with the specific knowledge, skills, and abilities to successfully perform the duties of the position." Similar language also appears in the other generic standards. The intent of the "quality experience" provision is to go beyond experience which is simply related to the line of work and focus upon directly related experience in the same field.

Assessment of individual candidates under this provision will take into account the extent of the candidate's experience beyond that which is necessary to meet basic eligibility

requirements; therefore, modification of X-118 qualification requirements is not an option for these candidates.

Candidates currently employed in the same or a directly related occupation, either within the agency under temporary or excepted service appointments, or outside the agency in State or local government, private industry or academia, are likely to qualify for provisional appointment leading to career status under this authority. For example, candidates employed in one of the private forestry operations located in the Pacific Northwest may possess experience that is directly related to one of the specializations covered by the forester or forestry technician standard.

Candidates who have made an outstanding contribution to the state of the art or to the advancement of knowledge in a directly related field may also qualify under this provision. Evaluation of these candidates will be performed by an agency subject matter expert and will focus upon extraordinary professional achievement, beyond normal professional competency, which may include, but is not limited to, such accomplishments as the publication of groundbreaking experimental results, authorship of seminal works in the field, or other noteworthy achievements or credentials.

Documentation regarding the extent to which the candidate's experience exceeds that which is required for basic eligibility, or documentation of extraordinary professional achievement, will be placed on the right-hand or permanent side of the Official Personnel Folder.

(c) Candidates who demonstrate high ability to do the work of the position are eligible for the quality category.

The intent of this provision is to allow candidates, who do not meet criteria established for above average educational achievement or quality experience, to be considered on the basis of having demonstrated high ability through some other means.

Assessment of the candidate's high ability will utilize the following measures:

1. Candidate has received a certificate or other indicator of successful completion of a trade or vocational program that is directly related to the work of the position to be filled, for positions for which this type of education has been determined to be appropriate. Candidates must also meet applicable experience requirements; that is, program completion is not a substitute for, but clearly exceeds, basic eligibility requirements.

2. Candidate has a grade point average of at least 2.7 on a 4-point scale, or equivalent, for at least 24 semester hours, or equivalent, of course work above the high school level that is directly related to the position to be filled.

f. *Grouping of Eligibles.* Candidates who have been evaluated against the criteria outlined above are grouped as follows:

- (1) Candidates meeting any one of the criteria outlined above are placed in the quality group.

- (2) Candidates who do not meet any of these criteria are placed in the eligible group.

- (3) Within each group, veterans will be listed ahead of nonveterans. In addition, for positions other than scientific and professional at GS-9 and above, preference eligibles with a compensable service-connected disability of 10 percent or more who meet basic qualifications requirements will be listed at the top of the quality group.

The quality group and/or the eligible group for a particular position vacancy may include candidates from one or more sources, provided that candidates from the State Employment Service or Federal Job Information Center are included, as appropriate.

g. *Selection and Appointment.* Selection will be made from among candidates in the quality group. When an inadequate number of candidates are in the quality group, all qualified candidates from all sources will be listed as a single group.

In making selections, veterans will be given preference over nonveterans. The provisions granting extra points for veterans and the rule of three (i.e., selection from the top three) will not be followed because candidates will not be assigned points or ranked numerically within a group. However, a preference eligible may not be passed over to select a nonpreference eligible, except under formal objection procedures. The agency will have authority to act on proposals to pass over preference eligibles, including compensably disabled veterans, for suitability, qualifications, and other disqualifying reasons. To do so, the agency will follow the procedures in title 5, United States Code.

Candidates selected under the demonstration project authority will receive provisional appointments and may be eligible for recruitment incentives, subject to the requirements outlined below.



### 3. Description of Interventions (c) and (d)

*a. Introduction.* Incentives will be authorized in order to positively impact the complete employment and compensation package as part of an effort to enhance the ability of the agency to compete with other employers for individuals with desired skills.

Subject to OPM approval, the agency may decide to identify additional incentives under this authority at a future date. Any such additions will be published in the *Federal Register*.

*b. Method.* Recruitment incentives will be authorized to encourage individuals to enter as well as to remain with the Federal service. These will include cash payments and reimbursement for travel and transportation expenses, any combination of which may be authorized for an individual candidate.

The decision to authorize an incentive will be based upon such market factors as salary comparability and salary offer issues; relocation considerations; programmatic urgency; emerging technologies; unique qualifications; and shortage categories.

*(1) Cash Payments.* Cash payments as a percentage of salary are authorized for recruitment purposes. The amount of a cash payment will be firmly established prior to entrance on duty, and is not considered to be a part of an individual's basic pay.

Cash payments may be made either in a lump sum upon entrance on duty, incrementally over a period not to exceed 36 months, or deferred until the completion of a specified period, not to exceed 36 months.

*(2) Travel and Transportation Expenses.* The authority to reimburse new appointees for travel and transportation expenses is expanded to include all of the expenses authorized for transferred employees as outlined in 5 U.S.C. 5724 and 5724a, 5724b, and 5724c. This includes payment to new appointees for such expenses as house hunting trips, sale of residence, purchase of new residence, access to relocation services, and other services normally available only to transferred employees.

*(3) Statement of Conditions of Employment.* A statement summarizing conditions of employment under which a recruitment incentive will be authorized will be prepared in each case, and will address the following:

- (a) Type of incentive(s)
  1. Cash payment
  2. Travel and transportation expenses
- (b) Total authorized percentage of salary
- (c) Method and schedule for payment

1. Cash payment
2. Intermittent over a period NTE 36 months
3. Deferred until the end of a specified period, NTE 36 months

#### (d) Service requirement

1. Time: 0 to 36 months
2. Location in which to be served
  - a. Federal service
  - b. Hiring agency or subdivision thereof
- (e) Conditions for repayment or cessation of payment

1. Repayment of lump sum not required
2. Intermittent payment ceases, repayment not required
3. Full repayment of lump sum or travel required

#### (4) Failure to Meet Service Requirement

Repayment of incentives is required if the employee is separated from the location identified under conditions of employment prior to fulfilling the service requirement, unless the reasons for the separation are beyond the control of the employee and are acceptable to the agency. Repayment is required in all cases where the employee is separated for misconduct. Actions to collect repayment may be terminated under appropriate circumstances and in accordance with 5 U.S.C. 5584.

#### B. Objective #2: Increase the reliability of the decision to grant career tenure.

##### 1. Intervention

Make initial appointments on a provisional basis, with career tenure earned through on-the-job performance.

##### 2. Introduction

The purpose of the provisional appointment is to allow managers an adequate period of time within which to assess job performance, and determine whether or not to continue the employment of the individual. The provisional appointment system replaces the current three-tier system of initial probationary period, career-conditional status, and career tenure, with a two-tiered system which effectively extends the maximum length of the probationary period, and which provides for conversion to career tenure.

The provisional appointment system will change the timeframes within which new hires are awarded career tenure. The formal processes required to effect these changes will be incorporated, to the maximum extent possible, into established processes and systems within the agency.

Aside from extending the time period, all other features of the current probationary period are retained, including the potential to remove an employee without providing the full

substantive and procedural rights afforded a career employee. This creates a clear distinction between provisional and career status. Under the experimental system the new employee's status remains provisional until his or her performance and conduct have been evaluated over an appropriate period of time.

##### 3. Method

Candidates hired under the demonstration project authority, as described under section II. E., above, Types and Numbers of Participating Employees, will be given provisional appointments to the competitive service as follows:

*Scientific positions:* Three year provisional appointment.

*All others:* Two year provisional appointment.

To ensure that supervisors have sufficient time to make tenure decisions, provisional appointment may be extended by the amount of time spent in non-duty status, except when protected by law, e.g., credit is given for nonpay time due to compensable injury and military service.

For the purpose of this subsection, provisional appointment means a permanent appointment, to the competitive service, which provides for conversion to career tenure. Scientific positions are those which are covered under the Research Grade Evaluation Guide.

A provisional appointee to the competitive service is given the full range of benefits provided to career-conditional employees under the current system, i.e., retirement, insurance, leave, within grade increases, etc. Provisional appointees are assigned to tenure group II.

Provisional appointees are eligible for training opportunities and position changes, subject to the time after competitive appointment requirement, in the same manner as career and career-conditional employees. Provisional appointment is portable both within and between ARS and FS experimental sites. Provisional appointment is not portable to non-experimental sites or to non-participating agencies. On position change within USDA but outside the experimental sites, an employee is converted to career conditional status. A discussion of probation and tenure follows in the next paragraph. Provisional appointees who have already been converted to career tenure remain in tenure group I upon position change, regardless of the length of time spent under provisional appointment.



Provisional appointees are eligible for transfer to other Federal agencies as career conditional employees. In such conversions both within and outside of USDA, employees must serve any remaining balance of the one-year probationary period. The three year period counting toward career tenure begins with the provisional appointment. Provisional appointees who have already been converted to career tenure transfer as career employees, tenure group I, regardless of the length of time served under provisional appointment.

Provisional appointment confers reinstatement eligibility identical to that conferred through career conditional employment, as outlined in 5 CFR 315.401. A provisional employee reinstated to a demonstration project test site begins a new provisional appointment. A provisional employee reinstated to either a comparison site, or to a non-participating agency, becomes a career conditional employee and must serve a one-year probationary period if the employee has not completed one year of satisfactory service under provisional appointment. In both cases, reinstatement is to tenure group II. Provisional appointees who have already been converted to career tenure, and preference eligibles, have unlimited reinstatement eligibility, regardless of the length of time served under provisional appointment.

Provisional appointees will have restoration rights under 5 CFR part 353 following military service or a job-related injury. They will not be eligible, however, for the reemployment rights in 5 CFR part 352 based on other service such as with an international organization, as these rights are generally discretionary with the agency head or reserved for non-probationers. Therefore, exclusion of provisional appointees is consistent with existing policies.

Completion of provisional appointment as a supervisor or manager fulfills the requirement to complete a supervisory probationary period.

Any employee appointed prior to the implementation date of the project will not be affected. Present performance management systems will not be affected, as performance standards must still be established against which employees will continue to be rated annually.

If the agency decides to separate a provisional employee for non-RIF reasons, the agency shall follow the current procedures for separating probationary employees, as outlined in 5 CFR 315.804, 315.805, and 315.806. 5 CFR

parts 432 and 752 do not apply to an employee under a provisional appointment, regardless of the employee's length of service.

If the agency must consider the employee for release from the competitive level under reduction in force procedures as outlined in FPM Chapter 351, provisional appointees are in tenure group II, subgroup AD, A, or B, as appropriate. They will be eligible for retained grade and pay and severance pay, as well as for the Displaced Employee Program and the Reemployment Priority List, if requirements unrelated to appointment type are met. Former provisional appointees who have been converted to career tenure are in tenure group I, regardless of the length of provisional appointment.

On the basis of exceptional performance, the agency may choose to convert the employee to a career appointment prior to the conclusion of the two or three year provisional appointment. If the supervisor decides to convert the employee to career tenure at an earlier date, documentation must be provided in support of this decision. This documentation should address the employee's exceptional performance, along with any exceptional skills or abilities demonstrated by the employee. However, the employee must serve at least one year before conversion to career tenure under provisional appointment.

The decision to convert an employee may take into account such factors as performance, suitability, conduct, aptitude, etc., as outlined in FPM Chapter 315, Subchapter 8. The decision to convert an employee in a scientific position will also take into account the documentation of his or her research findings. Employees must be rated at least fully successful in order to be converted.

Four months prior to the conclusion of the provisional appointment, the supervisor will be asked for a decision to either convert the employee to career tenure, or to separate the employee. This does not preclude the agency from separating a provisional employee any time prior to the conclusion of the provisional appointment.

#### IV. Training

A coordinated and extensive training effort, for managers and personnelists at both experimental and comparison sites, will be conducted prior to project implementation. The purpose of the training is to ensure that the experimental interventions are implemented as originally conceived, and that the intent of all interventions,

policies, and procedures developed in connection with the project are clearly communicated to all managers, supervisors, employees, and others affected by project implementation.

Training will be conducted prior to implementation to ensure that managers and personnelists understand not only the internal and standard operating procedures established in connection with the project but also the expanded role of the personnelist in providing management advisory services.

Training and orientation will include the following major elements:

1. An in-depth description of each of the project interventions, including philosophy and expected effects;
2. A detailed outline of the policies and procedures established in support of each intervention; and,
3. An overview of the project evaluation effort, including the methods through which data collection will be accomplished.

To the extent that the continuing success of the project is a function of the adequacy of the training effort, periodic refresher training sessions are planned for the purpose of ensuring that experimental interventions continue to be implemented as originally conceived. As the system was designed to increase managerial and supervisory accountability for the success of the recruitment and hiring program, a training effort particularly directed at managers and supervisors is critical to implementation.

More specifically focused and ad hoc training modules will be developed as additional training needs are identified throughout the life of the project.

#### V. Cost/Benefit Analysis

The experimental modifications are expected to be budget neutral. Current decentralized policies and procedures regarding the expenditure of agency funds will be retained. No additional funding will be requested; all costs will be charged to available funds through existing appropriations, including those incurred in the areas of project development, training, and project evaluation.

No additional costs are expected to accrue to the implementation of the alternative recruitment and hiring, the provisional appointment, or the recruitment incentive system. In fact, the alternative recruitment and hiring system is expected to reduce the number of staff hours expended testing, examining, and rating applicants, as well as to alleviate some of the administrative burden generated in support of these activities.



## VI. Duration of the Project

The project will terminate at or before the end of the five year period beginning on the date on which the project takes effect, unless otherwise extended or terminated at an earlier date in accordance with 5 U.S.C. 4703(e).

## VII. Evaluation Plan

### A. Introduction

An evaluation methodology is established in order to comply with the requirement that the demonstration project be evaluated in terms of the impact of project results against stated objectives as well as to determine whether or not permanent changes in law and/or regulation should be considered or proposed. The agency plans to enter into an agreement or contract with a qualified third party, to be identified at a later date, for the purpose of conducting the evaluation.

### B. Methodology

While the formal evaluation will be conducted by an independent external party, it is expected to follow a modified Action Research Model process. The utilization of that model in this situations means that the evaluators, researchers, and research participants share information about the research results to the extent that interventions detrimental to the organization can

either be modified or aborted. This is to prevent the continuation of an intervention with obvious and severe impact deficiencies.

The evaluation effort will be carried out in four distinct phases, as follows:

1. Design phase—includes the development of the experimental model, selection of test and comparison sites, and the collection of baseline data prior to implementation;

2. Implementation phase—includes actual project implementation, and monitoring to assure that each of the project interventions has been operationalized as originally conceived;

3. Evaluation phase—includes data collection and analysis. Periodic reports and annual summaries will be presented throughout the life of the project; and,

4. Concluding phase—summary evaluation and overall assessment of the impact of the project; conclusions and final recommendations.

### C. Model

There are two objectives, five interventions, two constraints, and fourteen related hypotheses. It is operationally not feasible to apply interventions (a), (b), and (e) independently, nor can interventions (c) and (d) be broken into separate experiments. It was further decided to apply all interventions as one experimental design because to do

otherwise would create inadequate sample sizes and become too difficult to manage. Hence, all interventions will be introduced at each of the experimental sites, although the authorization of recruitment and retention incentives is discretionary on the part of management. The utilization and results of experimentation with these incentives will be separately identified to the extent possible.

### 1. Objectives

(a) Increase the flexibility and responsiveness of the recruitment and hiring system.

(b) Increase the reliability of the decision to grant career tenure.

### 2. Interventions

(a) Decentralize the decision to authorize direct hire in shortage categories.

(b) Establish an alternative candidate assessment method which uses categorical grouping instead of numeric score.

(c) Provide monetary incentives for recruitment purposes.

(d) Reimburse travel and transportation expenses beyond those currently authorized for travel to first post of duty.

(e) Make initial appointments on a provisional basis, with career tenure earned through on-the-job performance.

TABLE 1.—EXPECTED EFFECTS, MEASURES, AND DATA SOURCES

| Constraints/Hypotheses   | Measures   | Data sources                             |
|--|--|--|
| Overall Project Constraints:   |  |  |
| A. Fair representation of protected groups, will not be adversely impacted .....   | Number of women & minorities in workforce.....<br>Number among applicants.....<br>Number offered positions.....<br>Number hired..... | PR<br>RAF<br>RAF<br>PR                   |
| B. Demonstration project will be cost neutral.....   | Administrative costs for recruiting and hiring.....<br>Amount spent for recruitment incentive & travel expenses.....                 | To be identified                         |
| Objective 1: Increase the flexibility and responsiveness of the recruitment and hiring system                                  |  |  |
| Interventions:   |  |  |
| (a) Expand authority for approving direct hire   |  |  |
| (b) Implement alternative candidate assessment method using categorical groupings  |  |  |
| (c) Provide option of awarding monetary incentives for recruiting purposes   |  |  |
| (d) Provide option of reimbursing travel and transportation expenses for recruiting purposes                                   |  |  |
| Hypotheses:  |  |  |
| A. Managers will perceive the new system as more responsive to local recruitment needs.  | Managers' perceptions.....   | Annual Survey of managers (AS)           |
| B. Managers will be more satisfied with the new recruitment and hiring system than with the traditional system.                | Managers' attitudes.....   | AS                                       |
| C. Under the experimental employee intake process, new employees will be hired more quickly than under the traditional system. | Time required to fill positions.....<br>Managers' perceptions.....<br>New hire's perceptions.....                                    | RAF<br>AS<br>Pre-employment survey (PES) |
| D. The experimental employee intake process will require less staff time than the traditional system.                          | Activities required to fill positions.....<br>Staff hours required to fill positions.....  | RAF<br>RAF                               |



TABLE 1.—EXPECTED EFFECTS, MEASURES, AND DATA SOURCES—Continued

| Constraints/Hypotheses   | Measures  | Data sources  |
|--|---|---|
| E. Quality of new hires under the experimental system, as measured by appropriate indicators, will be equivalent to that of employees hired through traditional methods. | GPA.....<br>Education level.....<br>School attended.....<br>Field of Study.....<br>Scholastic honors.....<br>Year of degree.....<br>Number of professional publications.....<br>Level of experience.....<br>Relevant experience.....<br>Previous salary.....<br>Competing offers.....   | PES<br>PES<br>PES<br>PES<br>PES<br>PES<br>PES<br>PES<br>PES<br>PES<br>PES |
| F. Level of performance for new hires will be equal to or greater than that for those hired through traditional means.   | Performance appraisal.....<br>Performance awards.....<br>Adverse actions.....<br>Managers' perceptions.....   | PR<br>PR<br>PR<br>AS  |
| G. Competitive recruiting position will improve for sites using the experimental recruiting and hiring system relative to those using traditional procedures.            | Managers' perception of competitive position.....<br>Candidates lost to competition.....<br>Number of qualified candidates who apply for USDA positions.....<br>Ability to hire candidates whom managers perceive as best qualified.....<br>Declination/acceptance ratio.....<br>Number, type, and \$ values of incentives awarded..... | AS<br>RAF<br>RAF<br>AS<br>RAF<br>RAF                                      |
| H. Recruitment incentives and payment of expenses will increase acceptance rates above and beyond any effects of the new recruitment and hiring system.                  | Declination/acceptance ratio.....<br>Number, type, and \$ value of incentives awarded.....  | RAF<br>PR   |
| I. Recruitment incentives tied to service agreements will improve retention of appointees relative to those hired without service agreements.                            | Rate at which service agreements are met.....<br>Turnover rates.....<br>Number, type, and \$ value of incentives awarded.....<br>Time span of service agreements.....   | PR<br>PR<br>PR<br>PR  |
| Objective 2: Increase the reliability of the decision to grant career tenure   |   |   |
| Intervention: (e) Make initial appointments on a provisional basis, with career tenure earned through job performance  |   |   |
| A. Managers will have more confidence in career tenure decisions under the new system than under the traditional system.   | Managers' perceptions.....  | AS  |
| B. Managers will utilize the flexibilities provided by the provisional appointment system.   | Turnover rates, reasons.....<br>Length of time spent under provisional appointments.....  | PR<br>PR  |
| C. Recruitment efforts will not be hampered by the requirement to hire new employees under provisional appointments.   | Managers' perceptions.....<br>New employees' perceptions.....   | AS<br>PES   |
| Overall Project Expectations:  |   |   |
| A. Supervisory accountability for the success of the recruitment and hiring program will increase.   | Managers' perceptions.....<br>Senior managers' perceptions.....<br>Documentation of accountability.....   | AS<br>Interviews<br>Performance Standards                                 |
| B. Management advisory role for personnel specialists will increase.....   | Managers' perceptions.....  | AS<br>Interviews  |

*D. Procedures*

Experimental results will be evaluated annually (1) against baseline data collected before the implementation of the interventions, and (2) between the experimental and comparison populations in each block and in toto. While the introduction of the interventions will continue throughout the five year life of the project, the collection of data and consequent evaluation efforts will continue until reasonably stable results can be identified. It is not necessary to wait until the results of the last experimentally hired employee can be fully evaluated before declaring the evaluation completed if the evaluators are satisfied that sufficient valid data have been accumulated to draw such a conclusion.

*E. Implementation Evaluation*

The evaluation model presents a framework for evaluating the success of the demonstration project in meeting its stated objectives. An equally important component of the overall evaluation is the description and monitoring of the implementation of the project.

Implementation monitoring will provide a qualitative context in which to understand and interpret evaluation results. This facet of the evaluation will help to answer the "why" questions that are likely to arise, whether the project is a success or failure, and provide the documentation of actual implementation necessary to replicate the results of this demonstration project in other settings.

Through examination of project-related documents, ongoing contact with key players in the participating

agencies, interviews with project participants, and case studies of selected units, the implementation evaluation will address such questions as:

1. When are project changes implemented?
2. What training and orientation is delivered to facilitate implementation?
3. What operating procedures/guidelines are developed to manage project implementation? How do these guidelines differ from the project plan?
4. How does actual practice differ from the project plan and/or operating guidelines?
5. To what extent are recruiting and hiring practices being carried out in a manner consistent with the merit principles outlined in 5 U.S.C. 2301?



6. To what extent do users of the new system understand it?

7. What differences in actual practice exist with respect to different types of candidates and/or new appointees?

8. To what extent are discretionary interventions (i.e., recruitment incentives) actually used?

9. How similar are the experimental and the comparison sites? How are they different?

10. What other changes occurring at experimental/comparison sites might provide competing explanations for observed changes?

11. What events in the external environment might provide competing explanations for observed changes or lack of change?

12. What unintended consequences of the demonstration project initiative may be observed?

13. What impact does the application of veterans preference under the project have on the examining and selection process? How many preference eligibles are being hired at experimental and comparison sites?

#### VIII. Experimental Design

The experimental design uses experimental and comparison groups matched for characteristics but not necessarily for population numbers in ten population blocks. The populations were classified into five occupational categories: scientists, professionals, administrative employees, technicians, and all others (includes clerical and Federal Wage System). Each participating unit of the two agencies, the Agricultural Research Service and Forest Service, appeared in as many of these five blocks as the occupational category distribution represents.

The occupational categories were then further subdivided into two situational categories: Difficult and simple. In the difficult situation, the working site or environment, and/or the local personnel supply pool, make it very difficult to attract candidates in a particular occupational category. This situational condition is not necessarily constant for all five occupational categories at any one location. It was postulated that this random assignment to the experimental and comparison groups within these ten groupings would result in ten matched groups. Except for limited administrative pre-selection, the assignments to experimental and comparison groups within each of the ten blocks were by random draw.

A detailed description of the selection process is available upon request.

#### Appendix A—Required Waivers to Law and Regulation<sup>1</sup>

##### *Waivers to title 5 United States Code*

- 1104.(a)(2) Delegation of authority for personnel management
- 3309. Preference eligibles; examinations; additional points for
- 3312.(b) Preference eligibles; physical qualifications; waiver
- 3313. Competitive service; registers of eligibles
- 3317.(a) Competitive service; certification from registers
- 3318.(a),(b) Competitive service; selection from certificates
- 3582. Rights of transferring employees
- 4303.(f) Actions based on unacceptable performance
- 5723. Travel and transportation expenses of new appointees and student trainees; manpower shortage positions
- 5724a, 5724b, 5724c. (Relocation Expenses)
- 7511.(a)(1) Definitions; application

##### *Waivers to title 5 Code of Federal Regulations*

- 1.3 (c) Definitions.
- 2.1(b) Competitive Examinations and Eligible Registers.
- 2.2 Appointments.
- 212.301 Competitive status defined.
- 315.201 Service requirement for career tenure.
- 315.301 Tenure on appointment from register.
- 315.302 Acquisition of competitive status.
- 315.401(a) Reinstatement.
- 315.402 Tenure on reinstatement.
- 315.501 (Transfer) Agency authority.
- 315.502 Tenure on transfer.
- 315.801 Probationary period; when required.
- 315.802 Length of probationary period.
- 330.303 OPM (Displaced Employee) program.

#### Part 332—Recruitment and Selection Through Competitive Examination (except 332.101)

- 335.101 Effect of position change on status and tenure.
- 335.102 Agency authority to promote, demote, or reassign.
- 337.101 Rating applicants. (except (c))
- 351.501(b)(2) Order of retention—competitive service.

#### Part 352—Reemployment Rights

#### Part 353—Restoration to Duty

- 410.302 Selection and assignment of trainees.

#### Part 432—Reduction in Grade and Removal Based on Unacceptable Performance

- 536.102 (Grade and Pay Retention) Definitions.
- 550.701(b) (Severance Pay) Coverage.

<sup>1</sup> Waiver required only to the extent that the project conflicts with pertinent provisions of law and regulation.

#### Part 752—Adverse Actions

#### Appendix B—Experimental and Comparison Sites; Agricultural Research Service

##### Experimental Sites:

Aiea/Hilo/Honolulu, HI  
Akron, OH  
Albany, CA  
Ames/Ankeny, IA  
Athens, GA  
Beaumont, TX  
Beckley, WV  
Beltsville, MD  
Bozeman, MT  
Byron, GA  
Canal Point, FL  
Charleston, SC  
Clemson, SC  
Columbia, MO  
Corvallis, OR  
Davis, CA  
Dawson, GA  
East Grand Forks, MN  
East Lansing, MI  
Experiment, GA  
Fairbanks, AK  
Fargo, ND  
Florence, SC  
Frederick, MD  
Fresno, CA  
Fort Collins, CO  
Geneva, NY  
Grand Forks, ND  
Houston, TX  
Ithaca, NY  
Kerrville, TX  
Lane, OK  
Las Cruces, NM  
Lexington, KY  
Logan, UT  
Lubbock, TX  
Madison, WI  
Manhattan, KS  
Miami, FL  
Miles City, MT  
New Orleans, LA  
Orient Point, NY  
Orlando, FL  
Orono, ME  
Oxford, MS  
Oxford, NC  
Pasadena, CA  
Peoria, IL  
Phoenix, AZ  
Pullman, WA  
Raleigh, NC  
Reno, NV  
Riverside, CA  
San Francisco, CA  
Shafter, CA  
Sidney, MT  
St. Paul, MN  
St. Croix, VI  
Stillwater, OK  
Stoneville, MS  
Suffolk, VA  
Temple, TX  
Tifton, GA  
Tucson, AZ  
University Park, PA  
Watkinsville, GA  
Weslaco, TX  
Woodward, OK  
Wooster, OH



## Yakima, WA

## Comparison Sites:

Aberdeen, ID  
 Auburn, AL  
 Baton Rouge, LA  
 Boise, ID  
 Booneville, AR  
 Boston, MA  
 Brawley, CA  
 Brookings, SD  
 Brooksville, FL  
 Brownwood, TX  
 Burns, OR  
 Bushland, TX  
 Cheyenne, WY  
 Clay Center, NE  
 College Station, TX  
 Columbus, OH  
 Coshocton, OH  
 Delaware, OH  
 Dubois, ID  
 Durant, OK  
 El Reno, OK  
 Ft. Lauderdale, FL  
 Gainesville, FL  
 Georgetown, DE  
 Greeneville, TN  
 Headquarters, MD  
 Houma, LA  
 Jackson, TN  
 Kearneysville, WV  
 Kimberly, ID  
 Laramie, WY  
 Lewisburg, TN  
 Lincoln, NE  
 Mandan, ND  
 Mayaguez, PR  
 Mississippi State  
 Morris, MN  
 Newark, DE  
 Pendleton, OR  
 Poplarville, MS  
 Prosser, WA  
 Salinas, CA  
 Savannah, GA  
 Stuttgart, AR  
 Tuxtla, MX  
 Urbana, IL  
 Wenatchee, WA  
 West Lafayette, IN  
 Winter Haven, FL  
 Wyndmoor, PA

## Forest Service

## Experimental Sites:

## Region 1

Regional Office (includes MTDC)  
 Clearwater NF  
 Custer NF (includes Helena NF)  
 Flathead NF  
 Idaho Panhandle NF  
 Kootenai NF  
 Lolo NF

## Region 2

Big Horn NF  
 Black Hills NF (includes Nebraska NF)

Grand Mesa, Uncompahgre, and Gunnison  
 NF

Pike and San Isabel NF  
 Rio Grande NF  
 Routt NF  
 Shoshone NF

## Region 3

Apache Sitgraves NF  
 Cibola NF  
 Coconino NF  
 Coronado NF  
 Kaibab NF  
 Lincoln NF  
 Sante Fe NF  
 Tonto NF

## Region 4

Regional Office/Intermountain Station  
 Targhee NF (includes Bridger-Teton, Challis,  
 Caribou, and Salmon NF)

## Region 6

Colville NF  
 Deschutes NF (includes Malheur and Ochoco  
 NF)  
 Mt. Baker/Snoqualmie NF (includes Seattle  
 Lab)  
 Mt. Hood NF  
 Olympic NF  
 Siuslaw NF  
 Umpqua NF  
 Wallowa-Whitman NF (includes LaGrande  
 Lab and Umatilla NF)  
 Wenatchee NF (includes Wenatchee Lab and  
 Okanogan NF)  
 Willamette NF  
 Winema NF (includes Fremont NF)

## Region 8

Region Office (includes Macon Seed Lab and  
 Caribbean NF)  
 Chattahoochee and Oconee NF (includes  
 Frances Marion and Sumter NF)  
 Jefferson NF (includes George Washington  
 NF)  
 Kisatchie NF (includes Texas NF, part of  
 Alexandria Lab)  
 Mississippi NF (includes NF's in Alabama  
 and Florida)

## Region 9

Region Office  
 Allegheny NF  
 Chequamegon NF  
 Chippewa NF  
 Hiawatha NF  
 Huron-Manistee NF  
 Mark Twain NF  
 Monongahela NF  
 Nicolet NF  
 Ottawa NF  
 Superior NF  
 Wayne-Hoosier NF

## Region 10

Regional Office  
 Chatham Area

Chugach NF  
 Ketchikan Area

## Research Units

Forest Products Lab  
 Intermountain Station/R-4 RO  
 Northeast Station/Area  
 Southeast Station (includes North Carolina  
 NF)  
 Southern Station

## Headquarters

## Comparison Sites:

## Region 1

Beaverhead NF (includes Gallatin NF)  
 Bitterroot NF  
 Deerlodge NF  
 Lewis and Clark NF  
 Nez Perce NF

## Region 2

Regional Office  
 Medicine Bow NF  
 San Juan NF  
 White River NF

## Region 3

Regional Office  
 Carson NF  
 Gila NF  
 Prescott NF

## Region 4

Payette NF (includes Boise and Sawtooth NF)  
 Utah-Nevada Cluster: Fish Lake, Dixie,  
 Humboldt, Toiyabe, Uinta, Wasatch-Cache,  
 Manti-LaSal, Ashley NF, and Geometronics  
 Service Center

## Region 6

Regional Office/PNW  
 Gifford Pinchot NF  
 Rogue River NF (includes Siskiyou NF)

## Region 8

Daniel Boone NF (includes Cherokee NF)  
 Ouachita NF (includes Ozark-St. Francis NF)

## Region 9

Green Mountain and Finger Lakes NF  
 Shawnee NF  
 White Mountain NF

## Region 10

Stikine Area

## Research Units

North Central Station  
 Pacific NW Station/R-6 RO  
 Rocky Mountain Station (includes Arapahoe  
 and Roosevelt NF)

## Headquarters

Washington Office  
 [FR Doc. 89-19673 Filed 8-22-89; 8:45 am]  
 BILLING CODE 6325-01-M



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| 1   | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20  | 21  | 22  | 23  | 24  | 25  | 26  | 27  | 28  | 29  | 30  | 31  | 32  | 33  | 34  | 35  | 36  | 37  | 38  | 39  | 40  | 41  | 42  | 43  | 44  | 45  | 46  | 47  | 48  | 49  | 50  | 51  | 52  | 53  | 54  | 55  | 56  | 57  | 58  | 59  | 60  | 61  | 62  | 63  | 64  | 65  | 66  | 67  | 68  | 69  | 70  | 71  | 72  | 73  | 74  | 75  | 76  | 77  | 78  | 79  | 80  | 81  | 82  | 83  | 84  | 85  | 86  | 87  | 88  | 89  | 90  | 91  | 92  | 93  | 94  | 95  | 96  | 97  | 98  | 99  | 100  |
| 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 | 114 | 115 | 116 | 117 | 118 | 119 | 120 | 121 | 122 | 123 | 124 | 125 | 126 | 127 | 128 | 129 | 130 | 131 | 132 | 133 | 134 | 135 | 136 | 137 | 138 | 139 | 140 | 141 | 142 | 143 | 144 | 145 | 146 | 147 | 148 | 149 | 150 | 151 | 152 | 153 | 154 | 155 | 156 | 157 | 158 | 159 | 160 | 161 | 162 | 163 | 164 | 165 | 166 | 167 | 168 | 169 | 170 | 171 | 172 | 173 | 174 | 175 | 176 | 177 | 178 | 179 | 180 | 181 | 182 | 183 | 184 | 185 | 186 | 187 | 188 | 189 | 190 | 191 | 192 | 193 | 194 | 195 | 196 | 197 | 198 | 199 | 200  |
| 201 | 202 | 203 | 204 | 205 | 206 | 207 | 208 | 209 | 210 | 211 | 212 | 213 | 214 | 215 | 216 | 217 | 218 | 219 | 220 | 221 | 222 | 223 | 224 | 225 | 226 | 227 | 228 | 229 | 230 | 231 | 232 | 233 | 234 | 235 | 236 | 237 | 238 | 239 | 240 | 241 | 242 | 243 | 244 | 245 | 246 | 247 | 248 | 249 | 250 | 251 | 252 | 253 | 254 | 255 | 256 | 257 | 258 | 259 | 260 | 261 | 262 | 263 | 264 | 265 | 266 | 267 | 268 | 269 | 270 | 271 | 272 | 273 | 274 | 275 | 276 | 277 | 278 | 279 | 280 | 281 | 282 | 283 | 284 | 285 | 286 | 287 | 288 | 289 | 290 | 291 | 292 | 293 | 294 | 295 | 296 | 297 | 298 | 299 | 300  |
| 301 | 302 | 303 | 304 | 305 | 306 | 307 | 308 | 309 | 310 | 311 | 312 | 313 | 314 | 315 | 316 | 317 | 318 | 319 | 320 | 321 | 322 | 323 | 324 | 325 | 326 | 327 | 328 | 329 | 330 | 331 | 332 | 333 | 334 | 335 | 336 | 337 | 338 | 339 | 340 | 341 | 342 | 343 | 344 | 345 | 346 | 347 | 348 | 349 | 350 | 351 | 352 | 353 | 354 | 355 | 356 | 357 | 358 | 359 | 360 | 361 | 362 | 363 | 364 | 365 | 366 | 367 | 368 | 369 | 370 | 371 | 372 | 373 | 374 | 375 | 376 | 377 | 378 | 379 | 380 | 381 | 382 | 383 | 384 | 385 | 386 | 387 | 388 | 389 | 390 | 391 | 392 | 393 | 394 | 395 | 396 | 397 | 398 | 399 | 400  |
| 401 | 402 | 403 | 404 | 405 | 406 | 407 | 408 | 409 | 410 | 411 | 412 | 413 | 414 | 415 | 416 | 417 | 418 | 419 | 420 | 421 | 422 | 423 | 424 | 425 | 426 | 427 | 428 | 429 | 430 | 431 | 432 | 433 | 434 | 435 | 436 | 437 | 438 | 439 | 440 | 441 | 442 | 443 | 444 | 445 | 446 | 447 | 448 | 449 | 450 | 451 | 452 | 453 | 454 | 455 | 456 | 457 | 458 | 459 | 460 | 461 | 462 | 463 | 464 | 465 | 466 | 467 | 468 | 469 | 470 | 471 | 472 | 473 | 474 | 475 | 476 | 477 | 478 | 479 | 480 | 481 | 482 | 483 | 484 | 485 | 486 | 487 | 488 | 489 | 490 | 491 | 492 | 493 | 494 | 495 | 496 | 497 | 498 | 499 | 500  |
| 501 | 502 | 503 | 504 | 505 | 506 | 507 | 508 | 509 | 510 | 511 | 512 | 513 | 514 | 515 | 516 | 517 | 518 | 519 | 520 | 521 | 522 | 523 | 524 | 525 | 526 | 527 | 528 | 529 | 530 | 531 | 532 | 533 | 534 | 535 | 536 | 537 | 538 | 539 | 540 | 541 | 542 | 543 | 544 | 545 | 546 | 547 | 548 | 549 | 550 | 551 | 552 | 553 | 554 | 555 | 556 | 557 | 558 | 559 | 560 | 561 | 562 | 563 | 564 | 565 | 566 | 567 | 568 | 569 | 570 | 571 | 572 | 573 | 574 | 575 | 576 | 577 | 578 | 579 | 580 | 581 | 582 | 583 | 584 | 585 | 586 | 587 | 588 | 589 | 590 | 591 | 592 | 593 | 594 | 595 | 596 | 597 | 598 | 599 | 600  |
| 601 | 602 | 603 | 604 | 605 | 606 | 607 | 608 | 609 | 610 | 611 | 612 | 613 | 614 | 615 | 616 | 617 | 618 | 619 | 620 | 621 | 622 | 623 | 624 | 625 | 626 | 627 | 628 | 629 | 630 | 631 | 632 | 633 | 634 | 635 | 636 | 637 | 638 | 639 | 640 | 641 | 642 | 643 | 644 | 645 | 646 | 647 | 648 | 649 | 650 | 651 | 652 | 653 | 654 | 655 | 656 | 657 | 658 | 659 | 660 | 661 | 662 | 663 | 664 | 665 | 666 | 667 | 668 | 669 | 670 | 671 | 672 | 673 | 674 | 675 | 676 | 677 | 678 | 679 | 680 | 681 | 682 | 683 | 684 | 685 | 686 | 687 | 688 | 689 | 690 | 691 | 692 | 693 | 694 | 695 | 696 | 697 | 698 | 699 | 700  |
| 701 | 702 | 703 | 704 | 705 | 706 | 707 | 708 | 709 | 710 | 711 | 712 | 713 | 714 | 715 | 716 | 717 | 718 | 719 | 720 | 721 | 722 | 723 | 724 | 725 | 726 | 727 | 728 | 729 | 730 | 731 | 732 | 733 | 734 | 735 | 736 | 737 | 738 | 739 | 740 | 741 | 742 | 743 | 744 | 745 | 746 | 747 | 748 | 749 | 750 | 751 | 752 | 753 | 754 | 755 | 756 | 757 | 758 | 759 | 760 | 761 | 762 | 763 | 764 | 765 | 766 | 767 | 768 | 769 | 770 | 771 | 772 | 773 | 774 | 775 | 776 | 777 | 778 | 779 | 780 | 781 | 782 | 783 | 784 | 785 | 786 | 787 | 788 | 789 | 790 | 791 | 792 | 793 | 794 | 795 | 796 | 797 | 798 | 799 | 800  |
| 801 | 802 | 803 | 804 | 805 | 806 | 807 | 808 | 809 | 810 | 811 | 812 | 813 | 814 | 815 | 816 | 817 | 818 | 819 | 820 | 821 | 822 | 823 | 824 | 825 | 826 | 827 | 828 | 829 | 830 | 831 | 832 | 833 | 834 | 835 | 836 | 837 | 838 | 839 | 840 | 841 | 842 | 843 | 844 | 845 | 846 | 847 | 848 | 849 | 850 | 851 | 852 | 853 | 854 | 855 | 856 | 857 | 858 | 859 | 860 | 861 | 862 | 863 | 864 | 865 | 866 | 867 | 868 | 869 | 870 | 871 | 872 | 873 | 874 | 875 | 876 | 877 | 878 | 879 | 880 | 881 | 882 | 883 | 884 | 885 | 886 | 887 | 888 | 889 | 890 | 891 | 892 | 893 | 894 | 895 | 896 | 897 | 898 | 899 | 900  |
| 901 | 902 | 903 | 904 | 905 | 906 | 907 | 908 | 909 | 910 | 911 | 912 | 913 | 914 | 915 | 916 | 917 | 918 | 919 | 920 | 921 | 922 | 923 | 924 | 925 | 926 | 927 | 928 | 929 | 930 | 931 | 932 | 933 | 934 | 935 | 936 | 937 | 938 | 939 | 940 | 941 | 942 | 943 | 944 | 945 | 946 | 947 | 948 | 949 | 950 | 951 | 952 | 953 | 954 | 955 | 956 | 957 | 958 | 959 | 960 | 961 | 962 | 963 | 964 | 965 | 966 | 967 | 968 | 969 | 970 | 971 | 972 | 973 | 974 | 975 | 976 | 977 | 978 | 979 | 980 | 981 | 982 | 983 | 984 | 985 | 986 | 987 | 988 | 989 | 990 | 991 | 992 | 993 | 994 | 995 | 996 | 997 | 998 | 999 | 1000 |



Wednesday  
August 23, 1989

# Export Import

## Part III

## The President Panama Canal Commission

35 CFR Parts 133 and 135  
Tolls for Use of Canal and Rules for  
Measurement of Vessels; Final Rule



**The President****PANAMA CANAL COMMISSION****35 CFR Parts 133 and 135**

RIN 3207-AA04

**Tolls for Use of Canal and Rules for Measurement of Vessels**

AGENCY: Panama Canal Commission.

ACTION: Final rule.

**SUMMARY:** This rule announces an increase of approximately 9.8% in the rates of tolls for use of the Panama Canal. The increase is necessary to comply with the requirements of law that tolls be set to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement, expansion and improvements. The effect of this action is to increase the rates of tolls for: (a) Merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, from \$1.83 to \$2.01 per net Panama Canal ton, (b) vessels in ballast without passengers or cargo, from \$1.46 to \$1.60 per net Panama Canal ton, and (c) other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, from \$1.02 to \$1.12 per ton of displacement.

In addition to the toll rate increase, certain rules of measurement of vessels for the Panama Canal are amended in order to simplify the Commission's measurement procedures and bring them in line with industry standards. These amendments will have a minimal impact on the amount of tolls collected.

**EFFECTIVE DATE:** October 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, DC 20036-4996. Telephone (202) 634-6441.

**SUPPLEMENTARY INFORMATION:** On June 1, 1989, an advance notice of proposed rulemaking was published in the *Federal Register* (54 FR 23493) recommending a 9.8% increase in the rates of Canal tolls, to become effective October 1, 1989. At that time, a written analysis showing the basis and justification for the proposed toll increase was made available to interested parties. The analysis stated that the increase was necessary because, by October 1, 1989, the Canal Commission would experience a significant deficit created by a trend of traffic growth revenue inadequate to absorb cost increases due to inflation

and other factors. Written comments were solicited and received from interested parties and a public hearing was held in Washington, DC on July 6, 1989. The views presented by the interested parties were considered by the Supervisory Board of the Commission at its quarterly meeting of July 1989. On July 28, 1989, the Board voted to recommend to the President that the measurement changes and the proposed 9.8% increase be implemented on October 1, 1989. The notice of proposals recommended by the Board to the President was published in the *Federal Register* (54 FR 32099) on August 4, 1989. A complete record of the proceedings since initiation of the proposals, including the data, views and arguments submitted by interested parties, was included in the Canal Commission's final recommendation and was forwarded to the President.

Section 1602(b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, and capital for plant replacement, expansion and improvements. From a review of the information submitted by the Canal Commission, it is evident that for the Canal to remain self-sufficient, a toll rate increase of 9.8% is required.

**List of Subjects in 35 CFR Parts 133 and 135**

Panama Canal, Vessels.

Accordingly, 35 CFR parts 133 and 135 are amended to read as follows.

**PART 133—TOLLS FOR USE OF CANAL**

1. The authority citation for part 133 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

2. Section 133.1 is revised to read as follows:

**§ 133.1 Rates of toll.**

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, \$2.01 per net vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with Part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, \$1.60 per net vessel ton.

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, \$1.12 per ton of displacement.

3. Section 133.34 is revised to read as follows:

**§ 133.34 Tolls for vessels in ballast.**

In order for a vessel to secure the reduced rate of toll for vessels in ballast, it may not be carrying any passengers or cargo nor any fuel for its own consumption in a quantity which exceeds the spaces on the vessel which are available for the carriage of fuel (i.e., the actual volume of tanks or fixed compartments, including settling tanks, used for the storage of lubricating oil or fuel, which spaces cannot be used to stow cargo or stores and which have been certified by official marketing to be spaces for the vessel's own fuel).

**PART 135—RULES FOR MEASUREMENT OF VESSELS**

4. The authority citation for part 135 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215; 45 FR 36043.

5. Section 135.285 is revised to read as follows:

**§ 135.285 Water ballast spaces, deducted.**

(a) Water ballast spaces, other than spaces in the vessel's double bottom, shall be deducted if they are adapted and used only for water ballast, have for entrance only ordinary circular or oval manholes whose greatest diameter does not exceed thirty-four inches (864 mm), and are not available for the carriage of cargo, stores, or fuel. Spaces that would otherwise qualify as water ballast except that they are also used for fuel for the vessel's own use shall be regarded as part of the vessel's fuel space as defined in section 135.390 of this part.

(b) Tonnage of tanks may be obtained by using liquid capacity times the conversion factor with one-sixth off for frames in case of peak tanks and one-twelfth off in case of wings or deep tanks when they cannot be readily measured.

6. Section 135.352 is revised to read as follows:

**§ 135.352 Definition of phrase "space occupied by engine rooms".**

The space occupied by engine rooms is defined as that occupied by the engine room itself and the boiler room, together



with the spaces strictly required for the working of the engines and boilers. In addition to those, included are the spaces taken up by the shaft trunks in vessels with screw propellers, the spaces which enclose the funnels, and the casings necessary for the admission of light and air into the engine room to the extent that such spaces are located below the upper deck (as defined in §§ 135.61 through 135.63 of this part) or below a deck with openings. These are usually designated as tonnage openings, which may be so closed as to permit the carriage of cargo or stores under the deck or a portion thereof. This definition

also covers donkey-engine and boiler spaces when the donkey-engine and boiler are situated within the boundary of the main engine room, or of the light and air casing above it and when they are used in connection with the main machinery for propelling the vessel. When the shafts of screw propellers pass through open spaces not enclosed within tunnels, the spaces allowed in lieu of tunnels must be of reasonable dimensions suitable for the vessel in question. When a portion of the space within the boundary of the engine or boiler room is occupied by a tank or tanks for the storage of fresh water,

lubricating oil, or fuel, including settling tanks, the space considered to be within the engine room shall be reduced by the space taken up by such tanks. Installations not strictly required for the working of the engines or boilers but that would otherwise qualify as a deduction under §§ 135.271 through 135.285 of this part may be left in and included in the engine room measurement.

Dated: August 15, 1989.

*Gay Bush*

President.

[FR Doc. 89-19784 Filed 8-22-89; 8:45 am]

BILLING CODE 3640-04-M







# Test Report

Wednesday  
August 23, 1989

## Part IV

## Department of Labor

### Mine Safety and Health Administration

#### 30 CFR Parts 56 and 57

#### Safety Standards for Berms or Guardrails at Metal and Nonmetal Mines; Proposed Rule



## DEPARTMENT OF LABOR

## Mine Safety and Health Administration

RIN 1219-AA56

## 30 CFR Parts 56 and 57

## Safety Standards for Berms or Guardrails at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

**SUMMARY:** MSHA published a final rule for Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and Nonmetal Mines on August 25, 1988 (53 FR 32496) which took effect October 24, 1988. After further Agency analysis and review of public comments, MSHA stayed the effective date of a portion of the berms or guardrails standard §§ 56.9300(d) and 57.9300(d) (53 FR 41600). The Agency has reviewed the stayed provision and is now proposing new language to replace the stayed paragraph.

**DATES:** Written comments on the proposed rule must be received on or before October 23, 1989.

**ADDRESSES:** Send comments to the Office of Standards, Regulations and Variances; MSHA, Room 631, Ballston Towers No. 3; 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, or Yvonne Johnson, Project Officer, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

**SUPPLEMENTARY INFORMATION:****I. Introduction and Rulemaking Background**

The final rule for Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and Nonmetal Mines was published on August 25, 1988 (53 FR 32496) as a revised a Subpart H-Loading, Hauling and Dumping and a revised Subpart M-Machinery and Equipment, of parts 56 and 57 of Title 30 of the Code of Federal Regulations. The final rule, which became effective on October 24, 1988, represents an updating, revision and reorganization of the existing standards in these areas.

Sections 56.9300 and 57.9300 of the final rule address the use of berms or guardrails on elevated roadways. A new paragraph (d) permits an alternative to berms or guardrails for elevated portions of infrequently traveled roadways used only by service or maintenance vehicles. It is the Agency's

position that under these limited conditions, berms or guardrails are not necessary if other safety precautions can provide at least the same degree of protection. Paragraph (d) of §§ 56.9300 and 57.9300 includes requirements that would assure the safety of miners using these roadways when berms or guardrails are not present.

After reviewing the final rule in preparation for implementation, and analyzing comments received at public meetings held for the purpose of describing the application of the rule, the Agency determined that paragraph (d) of §§ 56.9300 and 57.9300 did not appropriately address MSHA's goals. Therefore, MSHA stayed paragraph (d) of §§ 56.9300 and 57.9300 pending reconsideration of the provision by the Agency. Upon careful review, the Agency has determined that it is necessary to propose new language for paragraph (d) to accurately reflect the goals of the Agency.

**II. Discussion and Summary of Proposed Rule***Section 56/57.9300(d) Berms or Guardrails*

MSHA proposes to retain the introductory language to §§ 56.9300(d) and 57.9300(d) which allows a limited exception to the general berms or guardrails requirement for elevated roadways which are infrequently traveled and used only by service or maintenance vehicles. The standard continues to require berms or guardrails on elevated roadways which do not meet all the alternative requirements.

The Agency also proposes to retain paragraphs (1), (2), (4), and (5) of paragraph (d). Paragraph (d)(1) requires locked gates at entrance points to elevated roadways. Locked gates at entrance points limit uncontrolled and accidental access to unbermed areas. Paragraph (d)(2) requires posting of warning signs. Warning signs notify intended users of the unbermed roadways and remind them of the existing hazard.

MSHA proposes to modify paragraph (d)(3) of the stayed provision. The stayed paragraph (d)(3) requires reflectors (delineators) to be placed at 25-foot intervals along the perimeter of elevated roadways. The Agency has reviewed this provision and is proposing a performance-based alternative which is derived primarily from Department of Transportation (DOT) and Bureau of Mines (BOM) analyses. The proposal requires that delineators be installed along the perimeter of the elevated roadway so that, for both directions of travel, the reflective surfaces of at least

three delineators along each elevated shoulder are always visible to the driver, and spaced at intervals sufficient to indicate the edges and attitude of the roadway.

Road delineators are light reflecting devices mounted at the side of the roadway, in series, to indicate the roadway alignment. Delineators serve as a guidance device to aid vehicle operators in identifying elevated roadway edges and changes in direction under all circumstances of impaired visibility, including but not limited to darkness and adverse weather. In its Manual on Uniform Traffic Control Devices, paragraph 3D-3, the DOT states that delineators shall consist of reflector units capable of clearly reflecting light under normal atmospheric conditions from a distance of 1,000 feet when illuminated by the upper beam of standard automobile lights. MSHA would accept such delineators as conforming with the intent of the standard.

In the DOT manual, intended for application to streets and highways, DOT provides a table (Table III-1) for variable spacing of delineators as a function of horizontal curve radius. In order to provide drivers with the necessary level of guidance required to safely negotiate roadways, DOT suggests delineators be placed as close as 20 feet apart on curves having a radius of 50 feet. They also include a recommendation for spacing of delineators on uninterrupted highways. This uninterrupted highway spacing recommendation provides a range of 200 to 528 feet with the understanding that "spacing should be adjusted on approaches and throughout horizontal curves so that several delineators are always visible to the driver". A 528 foot spacing serves the purpose of providing 1/4 mile distance markers. The guidance role of delineators in unbermed elevated roadways is much more critical than on public highways. On public highways, berms or guardrails are provided in many instances as a physical backup to the guidance provided by the delineators. In addition to physical barriers, public highways typically have center lines and edge lines to assist delineators in providing the driver the necessary guidance. Since unbermed elevated mine roads do not have these and other safety features, MSHA feels the maximum recommended DOT delineator spacing of 528 feet would not provide adequate guidance to drivers. As mentioned, DOT has recognized that depending on the circumstances of a particular straight roadway, marker spacing should range from 200-528 feet.



In addition, the DOT manual indicates that the placement of signs warning of a change in road direction or attitude where speeds are relatively low should allow for an advance distance of about 250 feet. MSHA believes that delineators should be spaced at intervals sufficient to indicate the edges and attitude of the roadway to provide the driver with the necessary guidance to safely travel on the elevated roadway. MSHA particularly solicits comment on the appropriate spacing of delineators along a straight portion of an unbermed elevated mine road, and whether a specific distance should be set in the standard.

MSHA also recognizes that closer delineator spacing would be necessary on curved portions of unbermed elevated roadways to provide the driver with the guidance needed to safely negotiate these areas. A minimum of three points are necessary to indicate departure from a straight line to a curve. Therefore, to keep the driver constantly aware of approaching changes in road direction and edge location, it is necessary for the operator to have at least three delineators visible to him along each edge of an elevated roadway at all times. In light of this, MSHA proposes that at least three delineators be visible to the driver at all times on each elevated shoulder of an elevated roadway and spaced at intervals necessary to sufficiently indicate the direction and attitude of the roadway. The driver is thereby provided with feedback to maintain safe control of the vehicle.

Paragraph (d)(4) sets a speed limit of 15 MPH on unbermed roadways. Although §§ 56.9101 and 57.9101 require that operating speeds be consistent with the conditions of roadways, they contain no specific limits on speeds. In this alternative to berms or guardrails, a physical barrier to over-travel is not present. In order to assure safety, MSHA proposes to adopt a specific speed limit of 15 MPH at unbermed areas. This additional precaution is necessary to assure that the operator has sufficient time to react and avoid the edge of the elevated roadway in unexpected circumstances.

Paragraph (d)(5) assures proper traction on unbermed elevated roadways. The hazards to travel on an unbermed elevated roadway are significantly increased when weather conditions impair the traction. These roadways could be used only if corrective action, such as tire chains,

plowing, or sanding is used to improve traction.

#### *Executive Order 12291 and the Regulatory Flexibility Act*

This proposed rule would revise one previously issued standard to require that delineators shall be installed along the perimeter of elevated roadways so that the reflective surfaces of at least three delineators are always visible to the driver along each elevated shoulder for both directions of travel. In comparison with the stayed rule, the proposed rule would involve a minor cost reduction to some mine operators. Accordingly, the Agency has determined that this rule would not result in a major cost increase or have an incremental effect of \$100 million or more on the economy. Therefore, a regulatory impact analysis is not required.

#### *Regulatory Flexibility Analysis*

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has also determined that the final rule will not have a significant impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

The proposal does not contain any information collection requirements subject to the Paperwork Reduction Act of 1980.

#### **List of Subjects in 30 CFR Parts 56 and 57**

Mine safety and health, Metal and nonmetal mining, Safety standards for berms or guardrails.

Dated: August 16, 1989.

David C. O'Neal,

*Assistant Secretary for Mine Safety and Health.*

Title 30, chapter I, subchapter N, parts 56 and 57 of the Code of Federal Regulations are proposed to be amended as set forth below:

#### **PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES**

1. The authority citation for subpart H is added after the subpart heading to read as follows:

Authority: 30 U.S.C. 811.

2. In § 56.9300 paragraph (d) is revised to read as follows:

#### **§ 56.9300 Berms or guardrails.**

(d) Where elevated roadways are infrequently traveled and used only by service or maintenance vehicles, berms

or guardrails are not required when all of the following are met:

(1) Locked gates are installed at the entrance points to the roadway.

(2) Signs are posted warning that the roadway is not bermed.

(3) Delineators are installed along the perimeter of the elevated roadway so that, for both directions of travel, the reflective surfaces of at least three delineators along each elevated shoulder are always visible to the driver, and spaced at intervals sufficient to indicate the edges and attitude of the roadway.

(4) A maximum speed limit of 15 miles per hour is posted for the elevated unbermed portions of the roadway.

(5) Road surface traction is not impaired by weather conditions, such as sleet and snow, unless corrective measures are taken to improve traction.

#### **PART 57—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES**

3. The authority citation for subpart H is added after the subpart heading to read as follows:

Authority: 30 U.S.C. 811.

4. In § 57.9300 paragraph (d) is revised to read as follows:

#### **§ 57.9300 Berms or guardrails.**

(d) Where elevated roadways are infrequently traveled and used only by service or maintenance vehicles, berms or guardrails are not required when all of the following are met:

(1) Locked gates are installed at the entrance points to the roadway.

(2) Signs are posted warning that the roadway is not bermed.

(3) Delineators are installed along the perimeter of the elevated roadway so that, for both directions of travel, the reflective surfaces of at least three delineators along each elevated shoulder are always visible to the driver, and spaced at intervals sufficient to indicate the edges and attitude of the roadway.

(4) A maximum speed limit of 15 miles per hour is posted for the elevated unbermed portions of the roadway.

(5) Road surface traction is not impaired by weather conditions, such as sleet and snow, unless corrective measures are taken to improve traction.

[FR Doc. 89-19674 Filed 8-22-89; 8:45 am]

BILLING CODE 4510-43-M



The following is a list of the names of the persons who have been appointed to the various offices of the County of New York, for the year ending December 31st, 1890.

**Clerk of the Court of Sessions:** John W. Smith

**Judge of the Court of Sessions:** James H. Jones

**Recorder of Deeds:** William B. Brown

**County Clerk:** Charles D. Davis

**Assessor:** George E. Evans

**Sheriff:** Henry F. Fisher

**Treasurer:** Isaac G. Green

**Comptroller:** Jacob K. Klein

**Surrogate:** Louis M. Martin

**Register of Land Office:** Nathan P. Parker

**Register of Tax Office:** Oliver Q. Quinn

**Register of Probate Office:** Peter R. Reed

**Register of Marine Office:** Samuel S. Scott

**Register of Fish Office:** Thomas T. Taylor

**Register of Game Office:** Uriah U. Underhill

**Register of Forest Office:** Victor V. Vanderbilt

**Register of Park Office:** Walter W. Watson

**Register of Canal Office:** Xavier X. Xenophon

**Register of Harbor Office:** Yoram Y. Young

**Register of Navigation Office:** Zachary Z. Zimmerman

**Register of Commerce Office:** Aaron A. Adams

**Register of Agriculture Office:** Benjamin B. Baker

**Register of Manufactures Office:** Charles C. Carter

**Register of Education Office:** Daniel D. Drake

**Register of Health Office:** Edward E. Edwards

**Register of Charity Office:** Frank F. Farrar

**Register of Public Works Office:** George G. Gordon

**Register of Police Office:** Harry H. Harris

**Register of Fire Office:** Israel I. Isaacs

**Register of Sanitation Office:** Joseph J. Jacobs

**Register of Social Welfare Office:** Kenneth K. Kane

**Register of Labor Office:** Leonard L. Lewis

**Register of Industry Office:** Matthew M. May

**Register of Science Office:** Nathaniel N. Nash

**Register of Art Office:** Oscar O. Olsen

**Register of Music Office:** Philip P. Phillips

**Register of Literature Office:** Quincy Q. Quinn

**Register of History Office:** Robert R. Reed

**Register of Geography Office:** Stephen S. Stone

**Register of Natural History Office:** Theodore T. Todd

**Register of Botany Office:** Ursula U. Underwood

**Register of Zoology Office:** Vernon V. Vance

**Register of Mineralogy Office:** William W. Walker

**Register of Geology Office:** Xavier X. Xenophon

**Register of Astronomy Office:** Yoram Y. Young

**Register of Meteorology Office:** Zachary Z. Zimmerman

**Register of Oceanography Office:** Aaron A. Adams

**Register of Atmospheric Sciences Office:** Benjamin B. Baker

**Register of Earth Sciences Office:** Charles C. Carter

**Register of Life Sciences Office:** Daniel D. Drake

**Register of Physical Sciences Office:** Edward E. Edwards

**Register of Mathematical Sciences Office:** Frank F. Farrar

**Register of Engineering Office:** George G. Gordon

**Register of Architecture Office:** Harry H. Harris

**Register of Mechanical Engineering Office:** Israel I. Isaacs

**Register of Chemical Engineering Office:** Joseph J. Jacobs

**Register of Electrical Engineering Office:** Kenneth K. Kane

**Register of Civil Engineering Office:** Leonard L. Lewis

**Register of Industrial Engineering Office:** Matthew M. May

**Register of Naval Engineering Office:** Nathaniel N. Nash

**Register of Military Engineering Office:** Oscar O. Olsen

**Register of Agricultural Engineering Office:** Philip P. Phillips

**Register of Manufacturing Engineering Office:** Quincy Q. Quinn

**Register of Transportation Engineering Office:** Robert R. Reed

**Register of Communication Engineering Office:** Stephen S. Stone

**Register of Energy Engineering Office:** Theodore T. Todd

**Register of Environmental Engineering Office:** Ursula U. Underwood

**Register of Urban Planning Office:** Vernon V. Vance

**Register of Regional Planning Office:** William W. Walker

**Register of National Planning Office:** Xavier X. Xenophon

**Register of International Planning Office:** Yoram Y. Young

**Register of Global Planning Office:** Zachary Z. Zimmerman

**Register of Planetary Planning Office:** Aaron A. Adams

**Register of Galactic Planning Office:** Benjamin B. Baker

**Register of Cosmic Planning Office:** Charles C. Carter

**Register of Universal Planning Office:** Daniel D. Drake

**Register of Multiversal Planning Office:** Edward E. Edwards

**Register of Omniversal Planning Office:** Frank F. Farrar

**Register of Panuniversal Planning Office:** George G. Gordon

**Register of Alluniversal Planning Office:** Harry H. Harris

**Register of Hyperuniversal Planning Office:** Israel I. Isaacs

**Register of Superuniversal Planning Office:** Joseph J. Jacobs

**Register of Subuniversal Planning Office:** Kenneth K. Kane

**Register of Preuniversal Planning Office:** Leonard L. Lewis

**Register of Postuniversal Planning Office:** Matthew M. May

**Register of Antuniversal Planning Office:** Nathaniel N. Nash

**Register of Antiuniversal Planning Office:** Oscar O. Olsen

**Register of Disuniversal Planning Office:** Philip P. Phillips

**Register of Paruniversal Planning Office:** Quincy Q. Quinn

**Register of Pseudouniversal Planning Office:** Robert R. Reed

**Register of Apocryphal Planning Office:** Stephen S. Stone

**Register of Anachronistic Planning Office:** Theodore T. Todd

**Register of Chronoanachronistic Planning Office:** Ursula U. Underwood

**Register of Paradoxical Planning Office:** Vernon V. Vance

**Register of Contradictory Planning Office:** William W. Walker

**Register of Self-contradictory Planning Office:** Xavier X. Xenophon

**Register of Absurd Planning Office:** Yoram Y. Young

**Register of Nonsensical Planning Office:** Zachary Z. Zimmerman

**Register of Unintelligible Planning Office:** Aaron A. Adams

**Register of Incomprehensible Planning Office:** Benjamin B. Baker

**Register of Illogical Planning Office:** Charles C. Carter

**Register of Irrational Planning Office:** Daniel D. Drake

**Register of Unrealistic Planning Office:** Edward E. Edwards

**Register of Impractical Planning Office:** Frank F. Farrar

**Register of Impossible Planning Office:** George G. Gordon

**Register of Improbable Planning Office:** Harry H. Harris

**Register of Incredible Planning Office:** Israel I. Isaacs

**Register of Unbelievable Planning Office:** Joseph J. Jacobs

**Register of Doubtful Planning Office:** Kenneth K. Kane

**Register of Questionable Planning Office:** Leonard L. Lewis

**Register of Suspicious Planning Office:** Matthew M. May

**Register of Untrustworthy Planning Office:** Nathaniel N. Nash

**Register of Dishonest Planning Office:** Oscar O. Olsen

**Register of Deceitful Planning Office:** Philip P. Phillips

**Register of Fraudulent Planning Office:** Quincy Q. Quinn

**Register of Criminal Planning Office:** Robert R. Reed

**Register of Illegal Planning Office:** Stephen S. Stone

**Register of Unlawful Planning Office:** Theodore T. Todd

**Register of Immoral Planning Office:** Ursula U. Underwood

**Register of Unethical Planning Office:** Vernon V. Vance

**Register of Undesirable Planning Office:** William W. Walker

**Register of Unfavorable Planning Office:** Xavier X. Xenophon

**Register of Unpleasant Planning Office:** Yoram Y. Young

**Register of Unwelcome Planning Office:** Zachary Z. Zimmerman

**Register of Unwanted Planning Office:** Aaron A. Adams

**Register of Unused Planning Office:** Benjamin B. Baker

**Register of Unemployed Planning Office:** Charles C. Carter

**Register of Unsettled Planning Office:** Daniel D. Drake

**Register of Unstable Planning Office:** Edward E. Edwards

**Register of Unsafe Planning Office:** Frank F. Farrar

**Register of Unsuitable Planning Office:** George G. Gordon

**Register of Unsound Planning Office:** Harry H. Harris

**Register of Unwise Planning Office:** Israel I. Isaacs

**Register of Unlucky Planning Office:** Joseph J. Jacobs

**Register of Unfortunate Planning Office:** Kenneth K. Kane

**Register of Unhappy Planning Office:** Leonard L. Lewis

**Register of Unhealthy Planning Office:** Matthew M. May

**Register of Unwell Planning Office:** Nathaniel N. Nash

**Register of Unfit Planning Office:** Oscar O. Olsen

**Register of Unqualified Planning Office:** Philip P. Phillips

**Register of Unskilled Planning Office:** Quincy Q. Quinn

**Register of Untrained Planning Office:** Robert R. Reed

**Register of Uneducated Planning Office:** Stephen S. Stone

**Register of Unlearned Planning Office:** Theodore T. Todd

**Register of Uninformed Planning Office:** Ursula U. Underwood

**Register of Ignorant Planning Office:** Vernon V. Vance

**Register of Unaware Planning Office:** William W. Walker

**Register of Unconscious Planning Office:** Xavier X. Xenophon

**Register of Unfeeling Planning Office:** Yoram Y. Young

**Register of Unkind Planning Office:** Zachary Z. Zimmerman

**Register of Unloving Planning Office:** Aaron A. Adams

**Register of Unfriendly Planning Office:** Benjamin B. Baker

**Register of Unkindly Planning Office:** Charles C. Carter

**Register of Unpleasantly Planning Office:** Daniel D. Drake

**Register of Unpleasantly Planning Office:** Edward E. Edwards

**Register of Unpleasantly Planning Office:** Frank F. Farrar

**Register of Unpleasantly Planning Office:** George G. Gordon

**Register of Unpleasantly Planning Office:** Harry H. Harris

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**Register of Unpleasantly Planning Office:** Vernon V. Vance

**Register of Unpleasantly Planning Office:** William W. Walker

**Register of Unpleasantly Planning Office:** Xavier X. Xenophon

**Register of Unpleasantly Planning Office:** Yoram Y. Young

**Register of**



# Get It Right Report

Wednesday  
August 23, 1989

## Part V

## Department of Education

### 34 CFR Part 303

### Early Intervention Program for Infants and Toddlers With Handicaps; Final Rule



## DEPARTMENT OF EDUCATION

## 34 CFR Part 303

RIN 1820-AA49

## Early Intervention Program for Infants and Toddlers With Handicaps

AGENCY: Department of Education.

ACTION: Final rule; Correction.

**SUMMARY:** On June 22, 1989, final regulations for 34 CFR part 303, titled "Early Intervention Program for Infants and Toddlers with Handicaps", were published at 54 FR 26306. The regulations are corrected as set forth below.

**EFFECTIVE DATE:** September 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** Thomas B. Irvin, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4618 M/S 2313-4600), Washington, DC 20202. Telephone: (202) 732-1114.

## § 303.4 [Corrected]

1. On page 26310, in the third column, under § 303.4 Applicable regulations, paragraph (a)(1)(ii), the second line, is corrected to read "Department Regulations);".

2. On page 26311, in the first column, paragraph (a)(1)(v) is corrected to read "(v) Part 81 (General Education Provisions Act—Enforcement); and".

3. On the same page, same column, under *Definitions*, the twelfth listed word is corrected to read "Method (§ 303.344(d)(2)(iii))".

## § 303.12 [Corrected]

4. On page 26312, in the second column under paragraph (d)(7)(ii), the fifth line is corrected to read "paragraph (d)(7)(i) of this section; and".

## § 303.13 [Corrected]

5. On page 26313, in the second column, in the Note, the thirteenth line is corrected to read "this part. (See § 303.344(e), and the note 2".

## § 303.15 [Corrected]

6. On the same page, in the second column, the authority citation under § 303.15 is corrected to read "(Authority: 20 U.S.C. 1483)".

## § 303.19 [Corrected]

7. On page 26314, in the first column, in § 303.19(b)(2), the second line is corrected to read "developmental delay" (see 303.300);".

## § 303.22 [Corrected]

8. On the same page, in the second column, in § 303.22, the first line is

corrected to read "Except as provided in § 303.200(b)(3)". Also, the citation of authority for this section is corrected to read "(Authority: 20 U.S.C. 1401(a)(6))".

## § 303.121 [Corrected]

9. On page 26315, in the second column, in § 303.121(b), the first line is corrected to read "Keeping such records and affording such".

## § 303.122 [Corrected]

10. On the same page, in the same column, in § 303.122(a), the third line is corrected to read "acquired with those funds, will be in a public". Also in § 303.122(b), the first line is corrected to read "(b) A public agency will administer the".

## § 303.123 [Corrected]

11. On the same page 26315, in the same column, in § 303.123, the fourth line of the first paragraph is corrected by removing the word "the" at the end of the line.

## § 303.200 [Corrected]

12. On page 26318, in the third column, the second line is corrected to read "most recent satisfactory data as".

## § 303.202 [Corrected]

13. On the same page, in the same column, under § 303.202, the authority citation is corrected to read "(Authority: 20 U.S.C. 1484(c)(1))".

## § 303.203 [Corrected]

14. On the same page, in the same column, in § 303.203, the first line is corrected by adding the word "the" to the end of the line.

## § 303.300 [Corrected]

15. On page 26319, in the first column, the first line of the Note under § 303.300 is corrected to read "Note: Under § 303.322(c)(2), States are".

## § 303.321 [Corrected]

16. On the same page, in the third column, in § 303.321(c)(1), the designation of the fourth paragraph is corrected to read "(iv)".

## § 300.322 [Corrected]

17. On page 26320, in the first column, the section designated "§ 300.322" is corrected to read "§ 303.322".

## § 303.341 [Corrected]

18. On page 26321, in the first column, in § 303.341(a)(1), the end of the second line is corrected by adding ";".

## § 303.344 [Corrected]

19. On page 26322, in the second column, in Note 2 the second paragraph, first line, is corrected to read "The

"other services" in paragraph (e) of this".

## § 303.361 [Corrected]

20. On page 26323, in the second column, in § 303.361(b)(2), the seventh line is corrected to read "certification, licensing, registration, or other".

## § 303.402 [Corrected]

21. On page 26324, in the first column, in § 303.402, the eighth line is corrected to read "assessments, eligibility determinations".

## § 303.404 [Corrected]

22. On the same page, in the second column, in Note 1, the seventh and the eighth lines are corrected to read "300.571, and in 34 CFR part 99 (Family Educational Rights and Privacy), both of".

## § 303.423 [Corrected]

23. On page 26325, in the third column, the Note is corrected in the thirteenth line to read "the timeline for the due process hearing".

## § 303.460 [Corrected]

24. On page 26326, in the first column, in the Note, the second paragraph, third line is corrected to read "(Family Educational Rights and Privacy)".

## § 303.522 [Corrected]

25. On page 26328, in the first column, in the Note, the second paragraph, seventh line is corrected to read "states, in effect, that nothing in that title shall". Also in the same paragraph, the eleventh line is corrected to read "payment under subsection (a) of section 1903 of the Social Security Act for medical".

## § 303.600 [Corrected]

26. On the same page, in the second column, in the Note, the seventh line is corrected to read "appoint additional members on an ex officio".

## § 300.601 [Corrected]

27. On the same page, in the second column, the section number "§ 300.601" is corrected to read "§ 303.601".

## § 303.604 [Corrected]

28. On page 26329, in the first column, the authority citation for § 303.604 is corrected to read "(Authority: 20 U.S.C. 1482(f))".

Authority: 20 U.S.C. 1471-1485, unless otherwise noted.

Dated: August 16, 1989.

Robert R. Davila,

Assistant Secretary for Office of Special Education and Rehabilitative Services.

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# 49 CFR Part 665

Wednesday  
August 23, 1989

## Part VI

## Department of Transportation

### Urban Mass Transportation Administration

#### 49 CFR Part 665 Bus Testing; Rule



## DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation  
Administration

## 49 CFR Part 665

[Docket No. 89-B]

RIN 2132-AA30

## Bus Testing

AGENCY: Urban Mass Transportation  
Administration, DOT.

ACTION: Interim final rule.

**SUMMARY:** On May 25, 1989, the Urban Mass Transportation Administration published a proposed rule on its bus testing facility program. At the time of the proposal, the agency indicated that it would issue interim guidance to ensure timely implementation of the program. Today's document contains those interim procedures for the bus testing facility program.

**DATES:** *Effective date:* These procedures are effective from October 1, 1989, up to September 30, 1990.

*Comment due date:* Comments must be submitted by November 21, 1989.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366-0090; for legal issues, Daniel Duff or Susan Schuth, (202) 366-4011. The test facility can be reached by contacting James C. Wambold, Director of Automotive Research, (814) 863-1889.

**ADDRESSES:** For comments, UMTA, Department of Transportation, Office of the Chief Counsel, Rules Docket Clerk, 400 Seventh Street, SW., Room 9316, Washington, DC 20590. For UMTA staff, UMTA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. For the bus testing facility, Penn State Automotive Research Division, Research Building B, University Park, PA 16802.

**SUPPLEMENTARY INFORMATION:****I. Background**

The Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking (NPRM) on May 25, 1989, to implement section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). (See 54 FR 22716). The NPRM's comment period ended on July 24, 1989.

Section 317 directs the Secretary of DOT (as delegated to UMTA) to establish a bus testing facility at Altoona, Pennsylvania, and provides that no funds appropriated or made

available under the Urban Mass Transportation Act, as amended, after September 30, 1989, may be used to purchase a "new bus model", unless a bus of such model has been tested at the facility.

Section 317 also specifies that UMTA is to contract with a "qualified person" for the maintenance and operation of the facility. The agency has entered into an agreement with Pennsylvania State University to operate and maintain the bus testing facility. Penn State will operate the bus testing facility from two locations: first, its own test track and related facilities at State College, Pennsylvania; and, second, the former rail personnel training center at Altoona, Pennsylvania.

The agency's NPRM was expansive—proposing coverage of *all* vehicles used in mass transit and any new bus model used in mass transit after April 2, 1987 (the effective date of STURAA). In addition, the agency specifically requested comment on several issues.

To ensure that there are bus testing procedures in place before the statutory deadline of October 1, 1989, the agency indicated in the NPRM that it would issue interim guidance in advance of the agency's final rule. This document contains the interim guidance.

The preamble includes an overview of the comments received and an overview of the interim program, followed by specific procedural information on how the facility will operate and how a manufacturer can obtain information.

The agency has made the preliminary determinations needed to issue these procedures and to ensure that the bus testing facility is operational by October 1, 1989. While the interim guidance indicates the agency's position regarding testing at the facility during the interim period, these are only interim procedures and the agency in the final rule may decide to change certain of these procedures once it has some experience with the test facility and it has had the opportunity to analyze the comments in depth. Accordingly, actions and procedures provided for during the interim period do not necessarily represent decisions that will be reflected in the final rule.

The next section contains a brief summary of the comments submitted on the NPRM. Where appropriate, the preamble to this interim rule contains a discussion of the comments. As just indicated, however, the decisions made to implement the interim program are not necessarily the same as those that will be made at the time of the final rule.

The agency will provide a complete analysis of and response to the comments at the time of the final rule.

The agency anticipates that the final rule will be issued before the end of the interim procedure period. Among other things, information gained during this interim period will be useful to UMTA as it develops its final rule.

**II. Public Comments**

Fifty-one comments were submitted to the bus testing docket, although not all were received by the July 25, 1989, close of the comment period. As indicated earlier, a complete discussion of the comments, as well as the agency's response to the comments, will be provided in the final rule issued by the agency sometime before the end of the interim period. While a general indication of the comments are noted in the various program issues discussed in the next section of the preamble, the agency provides the following general information about the comments.

Comments were submitted by transit bus operators (22), state and local governments (12), bus manufacturers (including a component manufacturer and a final stage manufacturer) (12), one member of Congress, one test facility operator, one association, and one UMTA regional office.

Nineteen commenters submitted views on the interim period, and their views were as varied as the range of options presented by the agency in the NPRM. Five commenters recommended that *no* testing be done until the test facility is completed. Several others indicated that they objected to testing at or results from a source other than the Altoona facility.

Five commenters recommended a two-year transition period, allowing manufacturers to perform their own testing during this period. A few commenters indicated that these test results should be submitted to Altoona as a substitute for the facility tests.

In response to the agency's query about testing some but not all vehicle types initially, three commenters recommended that small vehicles be phased in for testing first, while one commenter recommended that 40-foot buses be phased in first.

Of specific concern to the agency is determining the cost of this program to the manufacturers, and ultimate purchasers of these tested vehicles. Several commenters submitted opinions concerning the cost of this program. One transit agency estimated the cost of testing a 40-foot bus to range between \$750,000 and \$1,250,000, while a bus manufacturer estimated the cost for this size bus to be approximately \$250,000. One bus manufacturer estimated that the requirement will impose "excessive



although presently incalculable costs on each bus funded with UMTA money." While few commenters provided the data to support their conclusions, the agency is carefully examining the information provided in preparing its final regulatory analysis for the final rule.

### III. Overview of the Interim Program

This section contains a discussion of a number of the key issues concerning interim period procedures at the bus testing facility. To set the framework for the discussion, we provide the following summary of key interim period requirements:

- The interim period is October 1, 1989 up to September 30, 1990. The agency may shorten the interim period, with Federal Register notice.
- A recipient of UMTA funds cannot lease or purchase a new model bus with any grants (including amendments) approved by UMTA after September 30, 1989, unless a model of such bus has been tested at the facility in accordance with these interim procedures.
- A new model bus is a bus put into mass transportation service in the United States after September 30, 1988, or a bus that has had a major change in components or a significant structural modification after September 30, 1988.
- During the interim period three categories of buses are subject to the bus testing procedures. (The agency may, after appropriate notice, expand the types of vehicles to be tested during the interim period.)
- A manufacturer that wants to have a bus tested contacts the facility, at which time the manufacturer will be told the fee for the testing, the specific tests to be conducted on the vehicles, and other facility procedures.
- The Test Report applicable to each vehicle will not become available publicly until the manufacturer provides an UMTA recipient with the Test Report as part of a procurement of an UMTA-funded vehicle.

**A. Federal Funds Subject to Interim Procedures.** (§ 665.1) In the NPRM, UMTA sought comment on its view that the bus testing facility requirements would apply to any funds "obligated or expended" by UMTA or a recipient after September 30, 1989. UMTA pointed out that this could affect ongoing recipient procurements, since funds "expended" by a recipient would be from grants made available by UMTA before October 1, 1989.

A significant number of commenters opposed this point of view noting, among other things, that it could disrupt ongoing procurement cycles, thereby

causing delay, increased costs, and reduced mass transit services.

In response to these concerns UMTA has reviewed its initial position, the statute, and its legislative history. On the basis of this review, the agency has determined that there appears to be no intent in the statute or its legislative history for the provision to be implemented in a fashion that would disrupt ongoing procurements. Moreover, the language of the statute dealing with Federal funds—"no funds appropriated or made available pursuant to this Act after September 30, 1989 \* \* \*"—has been interpreted by the agency in the same or similar contexts to apply to grants made after the date specified, not to the expenditure of funds by a recipient after that date.

Accordingly, these interim procedures apply only to grants (or amendments to existing grants) made after September 30, 1989. It is important to point out that funds for such grants may come from any fiscal year, not just fiscal year 1990. That is, any grant made after September 30, 1989, or any amendment to an existing grant made after that date, would be subject to these interim procedures regardless of the fiscal year from which the grant funds are made available. Stated another way, these interim procedures apply to all funds obligated by UMTA after September 30, 1989.

**B. Length of Transition Period.** (§ 665.3) The transition period for the bus testing facility will be from October 1, 1989, up to September 30, 1990. Before the end of this transition period, the agency will publish a final rule containing the final requirements for the bus testing program that will go into effect on October 1, 1990. The agency will use the information acquired during the transition period, in addition to the comments received in response to the NPRM, to make final determinations on the program.

If at any time during this transition period, however, UMTA determines that the facility is ready for full operation, UMTA reserves the right to end the interim period earlier than the twelve month period currently projected. Before doing so, however, the agency will publish a final rule outlining the specific final requirements applicable to this program, and establish the effective date for full operation at the facility in accordance with traditional notice requirements. Furthermore, the agency may, after appropriate notice, expand the scope of the interim period procedures to include vehicle types beyond those covered in this notice.

**C. Types of Vehicles Covered in Interim Program.** (§ 665.11) One of the key issues identified in the proposed rule was the definition of bus, which determines the vehicles to be tested at the facility. The agency had proposed a comprehensive definition, including small vans. During this start-up phase of the facility, however, the agency recognizes that there are certain limitations affecting the ability of the facility to test comprehensively all vehicles. Accordingly, for purposes of the transition period, a vehicle under one of the following categories is covered by the interim procedures:

- (1) Heavy duty large buses, approximately 35-40 foot, as well as articulated buses, with a minimum service life of 12 years or 500,000 miles.
  - (2) Heavy duty small buses, approximately 30 foot with a minimum service life of ten years or 350,000 miles.
  - (3) Purpose-built medium duty buses approximately 25-35 foot with a minimum service life of seven years or 200,000 miles.
- By limiting the transition program to these vehicle types we are excluding from testing both body on chassis medium duty buses with a service life of seven years or 200,000 miles as well as vans, purpose-built paratransit vehicles and other light duty chassis vehicles with a service life of four years or 100,000 miles.

For purposes of the interim transition period, the three categories of vehicles noted above vary somewhat from the categories described in the proposed rule. Specifically, the proposed rule contained a category of bus called medium duty, which the agency now has split into purpose-built medium duty buses and body on chassis medium duty buses. Again, the purpose-built medium duty buses are subject to testing during the interim period, as are the two categories of heavy-duty buses, but body on chassis medium duty buses with a service life of seven years or 200,000 miles, vans, purpose-built paratransit vehicles, and other light duty chassis vehicles with a service life of four years or 100,000 miles are not subject to testing during the interim period.

The agency may, after appropriate notice, expand the scope of vehicles to be tested at the facility during the interim period.

**D. New Bus Model.** (§ 665.5) The law provides that funds appropriated or made available after September 30, 1989, may not be obligated or expended for the acquisition of a new bus model unless a model of such bus has been tested at the bus testing facility. The law



also defines a "new bus model" as "a bus model which has not been used in mass transportation service in the United States before the date of production of such model or a bus model which has been used in such service but which is being produced with a major change in configuration or components."

On the one hand, as UMTA noted in the NPRM, it could be argued that only a new bus model introduced after September 30, 1989, would be subject to the bus testing provision, since it is after that date that UMTA funds appropriated or made available may not be obligated or expended on the acquisition of a new bus model that has not been tested at the bus testing facility. On the other hand, the drafters of the legislation may have meant to have the provision apply to any new bus model introduced after the 1987 STURAA was enacted into law, April 2, 1987. Choosing such a date would preclude manufacturers from trying to rush a new bus model into production before some later effective date. UMTA also sought comment on whether some date in between these two dates might be appropriate.

After consideration of this issue, UMTA has decided that a new bus model is one that is put in mass transportation service in the United States after September 30, 1988. UMTA believes that this date strikes a reasonable balance between the two other dates. For example, many commenters opposed an April 2, 1987, date as being inconsistent with the statute. Any such bus will have been in service for such a period of time that testing it at the facility probably would not provide any new information about its bus performance characteristics.

A bus model placed in service only on October 1, 1988, or later, would in the agency's view have insufficient operating experience such that testing at the facility would prove beneficial. Any such vehicle would be considered new for purposes of these procedures, and in conformance with the underlying purpose of the statute. Among other things, this approach also prevents a new bus model from being rushed into service, say, by September 25, 1989, to avoid a possible effective date of October 1, 1989.

**E. Major Changes in Configuration or Components.** (§ 665.5) Section 317 also provides that any major change in configuration or components made to an existing model would require such modified vehicle to be tested at the facility before it could be purchased or leased with UMTA funds. Examples of changes in configuration or components were provided in the definitions section

of the NPRM, and included twelve different items.

Because of the start up nature of the interim period, UMTA has decided to limit the types of change in component or configuration triggering testing to two specific categories. Accordingly, during the interim period only changes of major components or significant structural modifications will require testing at the facility. The final rule will address this issue in detail.

Examples of changes in components include, but are not necessarily limited to, changes in engine, transmission, or axles. Examples of significant structural modification include a dimensional change or the introduction of new structural materials.

The agency recognizes that in some cases a manufacturer may not be certain whether, for purposes of the interim period, a change is a type that would require testing at the facility. Accordingly, UMTA will respond to specific inquiries on this matter. In this connection, a manufacturer should write the Office of Technical Assistance and Safety at the address provided in the Addresses section of this Preamble.

It is important to note that the effective date of any such change is the same as that for a new model bus, as discussed above. That is, any change in major components or any significant structural modifications made to a bus after September 30, 1988, would require a model of that bus to be tested at the facility before a recipient could take final acceptance of such a model using funds from grants (including amendments) made after September 30, 1989.

**F. Acquisition of a New Bus Model.** (§ 665.7) The statute provides that UMTA funds may not be used for the "acquisition" of a new bus model unless it first has been tested at the facility. In the NPRM UMTA stated that acquisition included either purchase or lease of a bus, since in either case UMTA funds are being used to acquire a bus. In connection with leasing, the program should be easy to administer when a grantee leases a vehicle itself, since the grantee can require that any leased buses comply with these procedures. For the interim procedures, acquisition will apply to any purchase or lease of a bus.

UMTA noted in the NPRM that the agency saw potential compliance problems when a grantee leases services to be provided by, for example, a private operator. If the agency were to adopt a broad approach, it could require that vehicles used by a private company under service contract with the recipient comply with the provisions of this

program. UMTA is not covering such contracted for services under the interim procedures, but will address this issue in the final rule.

**G. Certification of Compliance.** (§ 665.7) A recipient must certify in each application to UMTA for the acquisition of vehicles that any new model bus or a bus produced with a major change in components to be purchased or leased with UMTA funds obligated after September 30, 1989, will be tested at the bus testing facility, and a Test Report provided, before final acceptance of the first vehicle by the recipient.

It is the responsibility of the recipient, in dealing with the manufacturer, to establish whether a vehicle to be acquired is subject to these interim procedures.

**H. Tests in Operation During Transition Period.** (§ 665.11) The test facility will conduct the following types of tests: maintainability; reliability; safety; performance; structural integrity; fuel economy; and noise. These tests are described in Appendix A to Part 665. As the agency indicated in the NPRM, we anticipate that the contractor running the test facility will modify the different tests as it gains more experience with the tests and the vehicles coming through the test facility. In the NPRM the agency indicated that the manufacturer will receive notice of these changes when the manufacturer registers for testing at the facility. It is important to note that such test changes are not subject to notice and comment rulemaking. More specifically, during the interim procedure a manufacturer will receive specific information of the test procedures to be conducted on its specific vehicle type when the manufacturer begins discussions with the operators of the facility to submit its vehicle to the facility for testing, as well as at contract execution.

The agency anticipates that the durability test in particular will be changed during the interim period. While the contractor has developed a modified test to simulate durability, current plans include the construction of a final "durability track." Once the track is complete (which the agency anticipates will be some time during the transition period) the contractor will update the tests procedures to indicate this, and provide manufacturers with the information about the expanded durability tests.

#### IV. Procedural Information for the Transition Period

**A. Scheduling a vehicle to be tested at the facility.** (Subpart C). A manufacturer may schedule a vehicle for testing by



contacting Penn State's Transportation Institute, the contractors for the bus testing facility program. In this connection, a manufacturer should contact James C. Wambold, Director of Automotive Research, The Pennsylvania State University, Pennsylvania Transportation Institute, Research Building B, University Park, PA 16802, (814) 863-1889.

When a manufacturer contacts Penn State, it will be provided with a draft contract for the testing, a fee schedule, and the test procedures that will be conducted on the vehicle. A manufacturer is responsible for transporting its vehicle to and from the facility at the beginning and completion of testing. (§ 665.27) Penn State will process vehicles for testing in the order in which the contracts are signed. The length of time to complete the testing will vary according to vehicle type, although actual testing time is not expected to exceed three months.

**B. Fees.** (§ 665.25) Section 317 provides that the contractor is to develop a fee schedule and is to collect the fees from the manufacturers. Section 317 also requires that UMTA approve the fee schedule. The agency anticipates that the fee schedule will be developed and approved by September 15, 1989. After this time a manufacturer may contact Penn State at the above address and request fee information.

**C. Administration of Tests.** (§ 665.29) The tests will be conducted at the facility, consistent with established procedures and will be consistent with the testing procedures provided to the manufacturer at the time of contract execution. As indicated in the test descriptions, Penn State will perform all normal maintenance and repair work on the vehicles. However, there also will be an office available to the manufacturer for on-site personnel to observe testing.

If at any time during the testing the manufacturer determines that it is in its best interest to withdraw its vehicle, the manufacturer may do so, without prejudice. No information about the tests will be made available in such cases. However, the manufacturer will be responsible for fees incurred up to the point of withdrawal.

**D. Release of Test Data.** (§ 665.13) The interim period procedures provide, consistent with the NPRM, that a manufacturer will be able to withdraw a vehicle from testing at any time before the completion of the tests, and no record of the partial tests will be kept. After vehicle testing is complete, Penn State will provide the entity with a copy of the Test Report for its vehicle.

For the interim period, the agency has decided that the trigger for the Test

Report becoming available to the public is at some point during the procurement process when a manufacturer responds to a procurement bid by an UMTA recipient. The specific time when that information is to be made available is a local option, but it must be made available no later than the point at which the recipient is to take final acceptance of the first vehicle. That is, a recipient is free to develop bid specifications that require the Test Report to be available, for example, when a manufacturer bids in response to the specifications, but in any event the Test Report must be made available no later than at the final acceptance of the first vehicle. From that point, on the Test Report will be available to the public.

The agency requested comment on this issue in the proposed rule, since there may be some entities interested in obtaining the information generated at the test center. A distinct majority favored maintaining the confidentiality of the material until the manufacturer decides that the bus actually will be the subject of a bid response. However, as already noted, this issue as well as all other issues are open for comment and subject to further analysis before the agency issues its final rule. In any event, once a Test Report becomes public, the facility will keep it and all other publicly available Test Reports available.

#### V. Regulatory Analyses and Certifications

**A. Executive Order 12291.** This action has been reviewed under Executive Order 12291, and UMTA has determined that this is not a major rule. As promulgated, this rule will not result in an annual effect on the economy of \$100 million or more, nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises in domestic or export markets.

**B. Regulatory Evaluation.** This regulation is significant under the Department's Regulatory Policies and Procedures, because of the potential high level of public interest. A final regulatory evaluation will be prepared before the final rule is issued. These interim procedures will assist the agency in its continuing effort to collect specific cost data on the program. To some extent commenters responded to the agency's request for specific data, although estimates were not accompanied by any underlying analysis or information. The agency has docketed an Addendum to its

preliminary regulatory evaluation, outlining the data available to date. The agency will issue a final regulatory analysis at the time the final rule is issued.

**C. Regulatory Flexibility Act.** In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96-354, UMTA believes that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Act, and accordingly has addressed this impact in its preliminary regulatory evaluation. The NPRM sought comment on the potential impact on this rule on the small manufacturer—of vans, paratransit vehicles and the like.

**D. Paperwork Reduction Act.** The collection of information requirements in this rule are subject to the Paperwork Reduction Act (44 U.S.C. Chapter 35). Section 317 of STURAA specifically requires the establishment of the facility, as well as the Test Reports. The paperwork requirements contained in this rule have been or will be submitted to the Office of Management and Budget for approval.

**E. Federalism—Executive Order 12612.** UMTA has reviewed this rule in light of the Federalism considerations set forth in Executive Order 12612. That Executive Order requires each Federal agency to address the impact of its regulations on State and local governments. Although this rule will have definite Federalism implications, because it will impose additional requirements on States, local governments, and public transit operators receiving Federal financial assistance from UMTA, this rulemaking is required by statute. UMTA considered the Federalism implications of this rulemaking during its development, and has designed it to provide recipients with as much flexibility as possible under the law. UMTA does not expect that this rule will have a substantial direct effect on the relationship between the Federal Government and the States or the distribution of power and responsibilities among the various levels of government.

In addition, UMTA has considered the Federalism implications of this rulemaking on public transit operators which are quasi-governmental or instrumentalities of States and local governments, and UMTA does not expect that this rule will have a substantial direct effect on the relationship between those public operators and the governmental entities with which they are associated. Accordingly UMTA has determined that



the preparation of a Federalism Assessment under Executive Order 12612 is not warranted.

#### Lists of Subjects in 49 CFR Part 665

Vehicle testing, Grant programs—transportation, Mass transportation.

Accordingly, for the reasons described in the Preamble, 49 CFR Chapter VI is amended by adding a new part 665, as set forth below:

### PART 665—BUS TESTING

#### Subpart A—General

##### Sec.

665.1 Purpose.

665.3 Scope.

665.5 Definitions.

665.7 Grantee certification of compliance.

#### Subpart B—Bus Testing Procedures

665.11 Testing requirements.

665.13 Test report and manufacturer certification.

#### Subpart C—Operations

665.21 Bus testing facility.

665.23 Scheduling.

665.25 Fees.

665.27 Transportation of vehicles.

665.29 Procedures during testing.

#### Appendix A—Tests To Be Performed at the Bus Testing Facility

Authority: Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*, 1608(h), section 317, Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR 1.51.

#### Subpart A—General

##### § 665.1 Purpose.

An applicant for Federal financial assistance under the UMT Act for the purchase or lease of buses with funds obligated by UMTA after September 30, 1989, must certify to UMTA that any new bus model acquired with such assistance has been tested in accordance with this part. This part contains the information necessary for a recipient to ensure compliance with this provision.

##### § 665.3 Scope.

This part applies to a recipient of Federal financial assistance under sections 3, 9, 16(b)(2), or 18 of the UMT Act. These interim procedures shall be in effect from October 1, 1989, up to September 30, 1990, unless the agency, with appropriate notice, expands the scope of this rule to cover additional vehicles or makes the interim rule final.

##### § 665.5 Definitions.

As used in this part—

*Administrator* means the Administrator of the Urban Mass

Transportation Administration or his or her designee.

*Bus* means a rubber-tired automotive vehicle used for the provision of mass transportation service by or for a recipient.

*Bus Model* means a bus design or variation of a bus design usually designated by the manufacturer by a specific name and/or model number.

*Bus Testing Facility* means a testing facility established by renovation of a facility constructed with Federal assistance at Altoona, Pennsylvania under section 317(b)(1) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and includes proving ground facilities operated in connection with the facility.

*Major changes in configuration or components* means a change of major components or significant structural modifications.

*Mass Transportation Service* means the operation of a vehicle which provides general or special service to the public on a regular and continuing basis.

*New Bus Model* means a bus model which—

(1) Has not been used in mass transportation service in the United States before October 1, 1988; or

(2) Has been used in such service but which after September 30, 1988, is being produced with a change of major components or significant structural modifications.

*Recipient* means a direct recipient of funds under sections 3, 9, 16(b)(2), or 18 of the UMT Act.

*Test Report* means the final document prepared by the operator of the bus Testing Facility stating the results of the tests performed on each bus.

*UMT Act* means the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. app. 1601 *et seq.*)

##### § 665.7 Grantee certificate of compliance.

(a) In each application to UMTA for the purchase or lease of buses, a recipient will certify that any new bus model, or any bus model with a major change in configuration or components, to be acquired or leased with funds obligated by UMTA after September 30, 1989, will be tested at the Bus Testing Facility, and a Test Report provided before final acceptance of the first vehicle by the recipient.

(b) It is the responsibility of the recipient in dealing with a manufacturer, to establish whether a vehicle to be acquired is subject to these procedures.

#### Subpart B—Bus Testing Procedures

##### § 665.11 Testing requirements.

(a) A new bus model to be tested at the Bus Testing Facility shall—

(1) Be a single model;

(2) Meet all applicable Federal Motor Vehicle Safety Standards, as defined by the National Highway Traffic Safety Administration in part 571 of this title;

(3) Be substantially fabricated and assembled by techniques and tooling that will be used in production of subsequent buses of that model.

(b) The model shall be tested for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise.

The following vehicle types shall be tested:

(1) Heavy duty large buses, approximately 35–40 foot, as well as articulated buses, with a minimum service life of 12 years or 500,000 miles.

(2) Heavy duty small buses, approximately 30 foot with a minimum service life of ten years or 350,000 miles.

(3) Purpose-built medium duty buses approximately 25–35 foot with a minimum service life of seven years or 200,000 miles.

(c) The operator of the facility shall develop a test plan for the testing of vehicles at the facility, which is approved by UMTA, and which generally follows the guidelines set forth in appendix A of this part.

##### § 665.13 Test report and manufacturer certification.

(a) Upon completion of testing, the operator of the facility shall provide a Test Report to the entity that has had the bus tested.

(b)(1) A manufacturer of a new bus model or a bus produced with a major change in component or configuration shall provide a copy of the Test Report to a recipient during the point in the procurement process specified by the recipient.

(2) A manufacturer who releases a report under paragraph (b)(1) of this section also shall provide notice to the operator of the facility that the report is available to the public.

(c) If a bus model subject to a Test Report has a change that is not a major change under this part, the manufacturer shall advise the recipient during the procurement process and shall include a description of the change and its basis for concluding that it is not a major change.

(d) A Test Report shall be available publicly once the owner of the Report makes it available during the recipient's procurement process. The operator of



the facility will have available for distribution copies of all the publicly available reports.

(e) The Test Report is the only information or documentation that will be made available publicly in connection with any bus model tested at the facility.

### Subpart C—Operations

#### § 665.21 Bus testing facility.

(a) *Location.* The bus testing facility is located at Altoona, Pennsylvania, and includes proving ground facilities.

(b) *Operator.* The facility is operated by Penn State University under contract with UMTA.

#### § 665.23 Scheduling.

(a) A manufacturer may schedule a vehicle for testing by contacting Penn State's Transportation Institute (PSTI) at the following address: The Pennsylvania State University, Pennsylvania Transportation Institute, Research Building B, University Park, PA 16802 (814) 863-1889.

(b) Upon contacting PSTI, the manufacturer will be provided the following:

- (1) A draft contract for the testing;
- (2) A fee schedule; and
- (3) The draft test procedures that will be conducted on the vehicle.

(c) PSTI will provide final test procedures to be conducted on the vehicle at the time of contract execution.

(d) PSTI will process vehicles for testing in the order in which the contracts are signed.

#### § 665.25 Fees.

(a) Fees charged by the operator are according to a schedule approved by UMTA.

(b) Fees will be prorated for a vehicle withdrawn from the facility before the completion of testing.

#### § 665.27 Transportation of vehicle.

A manufacturer is responsible for transporting its vehicle to and from the facility at the beginning and completion of the testing.

#### § 665.29 Procedures during testing.

(a) The facility operator shall perform all testing, consistent with established procedures at the facility and with the test procedures provided the manufacturer at the time of contract execution.

(b) The manufacturer of a bus being tested may terminate the test program at any time before the completion of testing, and shall be charged a fee for the tests performed.

(c) The operator shall perform all maintenance and repairs on the test

vehicle, consistent with manufacturers specifications.

(d) The manufacturer may observe all tests. The manufacturer may not provide maintenance or service.

#### Appendix A to Part 665—Tests To Be Performed at the Bus Testing Facility

The seven tests to be performed on each vehicle are required by the bus testing legislation and are based in part on tests described in the UMTA report "First Article Transit Bus Test Plan", which is mentioned in the legislative history of section 317. When appropriate, SAE test procedures and other procedures accepted by the transit industry will be used. The seven tests are described in general terms in the following paragraphs.

1. *Maintainability.* The maintainability test includes bus servicing, preventive maintenance, inspection, and repair. It also will include the removal and reinstallation of the engine and drive train components that would be expected to require replacement during the bus' normal life cycle. Much of the maintainability data will be obtained during the bus durability test at the proving ground. Up to twenty-five percent of the bus life will be simulated and there will be servicing, preventive maintenance, and repair actions. These actions will be done by test facility staff, although manufacturers will be allowed to maintain a representative on site during the testing. Since the operator will not become familiar with the detailed design of all new bus models that are tested, tests to determine the time and skill required to remove and reinstall an engine, a transmission, or other major propulsion system components may require advice from the bus manufacturer. All routine and corrective maintenance will be carried out by the test operator in accordance with the manufacturer's specifications.

The maintainability Test Report will include the frequency, personnel hours, and replacement parts or supplies required for each action during the test. The accessibility of selected components and other observations that could be important to a bus user will be included in the report.

2. *Reliability.* The question of reliability will be addressed by recording all bus breakdowns during testing. It is recognized that with one test bus it is not feasible to conduct statistical reliability tests. It is anticipated that bus operation on the durability course should reveal the problems that would otherwise not be detected until much later during scheduled transit service. The bus failures, repair time and the actions required to get the bus back into operation will be recorded in the report.

3. *Safety.* The safety test will be a handling and stability test. The test is an obstacle avoidance or double-lane change test that will be performed at the proving ground. The double-lane change course will be different for each type of bus and the speed could be different for each type of bus. Coach speed will be held constant throughout a given test run. Individual test runs will be made at increasing speeds up to 45 mph or until the coach can no longer be operated safely over the course, whichever speed is lower. Both left- and right-hand lane changes will be

tested. The 45 mph maximum speed was selected because it is a reasonable speed at which to expect this bus type to maneuver safely.

4. *Performance.* The performance test will be performed on the proving ground and will measure acceleration and gradeability with the test vehicle operated at seated load weight. Top speed also will be measured if it can be done safely on the track. The test will be performed using a fifth wheel or equivalent and associated instrumentation. The bus will be accelerated at full throttle from standstill to maximum safe speed on the track. The report will include a table of time required to accelerate to each 10 mph increment of speed and when possible, the top speed. The gradeability capabilities will be calculated both from the test data and a test from a dead stop on a minimum of a 15 percent grade.

5. *Structural Integrity.* Two different structural integrity tests will be performed. Structural strength and distortion tests will be performed at the testing facility in Altoona and structural durability tests will be performed at the proving ground.

#### a. Structural Strength and Distortion Tests

(1) The structural strength and distortion tests will be conducted and will be different for each type of bus. For example, a shakedown of the bus structure will be conducted by loading and unloading the bus no more than three times with a distributed load equal to 2.5 times gross load. The bus then will be loaded with a distributed load to gross vehicle weight. (Gross vehicle weight is a curb weight plus gross load.) Increase in floor deflection will be measured as the bus weight is increased from curb weight to gross vehicle weight. Then the bus will be loaded with a distributed load equal to 2.5 times gross load. The bus then will be unloaded and inspected for any permanent deformation on the floor or coach structure.

(2) The bus will be loaded to gross vehicle weight, with one wheel on top of a 6-inch-high curb and then in a 6-inch-deep pot hole. This test will be repeated for all four wheels. The test will verify: (a) Normal operation of the steering mechanism and (b) operability of all passenger doors, passenger escape mechanisms, windows, and service doors. In addition, a water leak test will be conducted.

(3) Using a load-equalizing towing sling, a static tension load equal to 1.2 times the bus curb weight will be applied to the bus towing fixtures (front and rear). The load will be removed and the tow eyes and adjoining structure will be inspected for damages or permanent deformations.

(4) The bus at curb weight will be towed with a heavy wrecker truck for several miles after which it will be inspected for structural damage or permanent deformation.

(5) With the bus at curb weight probable damages due to tire deflating and jacking will be tested.

(6) With the bus at curb weight possible damages or deformation associated with lifting the bus on a two post hoist system or supporting it on jack stands will be assessed.



#### b. Structural Durability

The structural durability test also will be different for each type of bus, but all tests will be performed on the durability course at the proving ground, simulating up to twenty-five percent of the vehicle's normal service life. During the test there will be inspections of the bus structure and the mileage and identification of possible structural anomalies.

8. *Fuel Economy.* This test will be run to determine the fuel economy in miles per gallon or equivalent of the new bus models.

The test will be run at seated load weight on a duty cycle that simulates transit service for the type of vehicle being tested. (The methods of fuel use measurement for different fuels have yet to be determined) The fuel measurement devices under consideration include volumetric, gravimetric, flow, and pressure.

The agency notes that this fuel economy test bears no relation to the calculations done by the Environmental Protection Agency (EPA) to determine fuel economy levels for the Corporate Average Fuel Economy Program. However, the test will provide data

which can be used by recipients in their purchase decisions.

7. *Noise.* There will be two noise tests: (1) Interior noise and vibration and (2) exterior noise. It is recognized that different levels of noise are expected and acceptable with different types of vehicles and different test procedures might be required.

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Roland J. Mross,

Deputy Administrator.

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